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* The opinion and judgments of the Court of Appeals and the judgment of the District Court are not reprinted in this appendix since they are already printed as an appendix to the petition.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

[Caption omitted]

1972

DATE	PROCEEDINGS
June 29	Information filed.
	Pltf. precipe for 4 summonses directing defts. to appear July 10, 1972 at 1:00 P.M., filed, and summonses and copies issued.
July 6	Order appointing counsel for Deft. Bonnie Ellen Velasquez, filed.
	Summons with acknowledgment of service by deft. Martin DeWalt Mazurie on July 3, 1972, filed.
	Summons with acknowledgment of service by deft. Margaret J. Mazurie on July 3, 1972, filed.
	Summons with acknowledgment of service by deft. The Blue Bull, Inc. by Margaret J. Mazurie, Pre.-Treasurer on July 3, 1972, filed.
July 10	Deft. Bonnie Ellen Velasquez arraigned, plea of not guilty ent. by deft. to Counts I and II.
	Deft. The Blue Bull, Inc. arraigned, plea of not guilty ent. by deft.
	Deft. Margaret J. Mazurie arraigned, plea of not guilty ent. by deft to Count I.
	Deft. Martin DeWalt Mazurie arraigned, plea of not guilty ent. by deft. to Count I.
	Appearance for defts. Martin Dewalt Mazurie, Margaret J. Mazurie and The Blue Bull, Inc., filed.
	Summons with deft. Velasquez's acknowledgment of same on July 5, 1972, filed.
Aug. 15	4 Waivers of trial by jury by all 4 defts., with consent of D.A., and approval of the Court, filed, copies to counsel.
Aug. 23	Notice setting non-jury trial for Sept. 29, 1972 at 1:30 p.m., filed and copies to counsel.
Sept. 19	Notice resetting non-jury trial for 9-29-72 at 10:30 a.m., filed and copies to counsel.

1972

DATE	PROCEEDINGS
	1 pltf. precipe for subpoena duces tecum, filed, subpoena and copy issued.
	1 pltf. precipe for 4 witness subpoenas, filed, and subpoenas and copies issued.
Sept. 25	Notice resetting trial to the Court for October 12, 1972 at 9:30 A.M., filed, notices to counsel.
Sept. 28	1 pltf. subpoena duces tecum with Marshal's return of service on Sept. 2, 1972, filed.
	4 pltf. witness subpoenas with Marshal's return of service on Sept. 26, 1972, filed.
Oct. 6	Motion for order directing witness subpoenas to issue at government expense filed.
	Order directing witness subpoenas to issued at government expense, filed, & copies to counsel, subpoena & copy issued.
Oct. 10	One deft. subpoena issued.
	Pltf. precipe for 3 witness subpoenas, filed, and subpoenas and copies issued.
Oct. 12	Reporters transcript of proceedings of July 10, 1972, filed.
	3 pltf. and 2 deft. subpoenas, with returns, filed.
	Appearance of Robert M. Seipt, as atty. for defts. Martin and Margaret Mazurie and The Blue Bull, Inc., filed.
	Trial to Court commenced and concluded. Matter taken under advisement. Pltf. given to Nov. 8, 1972 to file proposed judgment of conviction; deft. given to Nov. 8, 1972 to file proposed judgment of acquittal.
Oct. 13	Judgment and acquittal as to deft. Velasquez, ent. and filed, and copies to counsel.
Oct. 16	Voucher for counseling services, filed. (as to deft. Velasquez)
Nov. 8	Memorandum of law of the plaintiff, The United States of America, filed.
	Proposed general findings, special findings of fact, and conclusions of law submitted by plaintiff, The United States of America, filed.
Nov. 22	Judgment of conviction with general findings, finding defendants Martin Dewalt Mazurie, Margaret J. Mazurie and The Blue Bull, Inc.,

1972 DATE	PROCEEDINGS
	guilty on Count 1 of the Information herein, ent. and filed, and copies to counsel.
Nov. 27	Notice setting imposition of sentence for Dec. 1, 1972 at 9:30 A.M., filed, copies to counsel.
Dec. 1	Hearing not held.
Dec. 4	Notice of appeal filed by defendants Martin Dewalt Mazurie, Margaret J. Mazurie and The Blue Bull, Inc., and copies mailed by Clerk on December 4, 1972 to attys. Richard V. Thomas, John R. Hursh, Charles E. Hamilton, Robert M. Seipt and to Clerk, U.S. Court of Appeals, Tenth Circuit, Denver, Colo.
	Written consent of deft. Martin Dewalt Mazurie to be sentenced in absentia, filed.
	Written consent of deft. Margaret J. Mazurie to be sentenced in absentia, filed.
	Written consent of deft. The Blue Bull, Inc., by and through its President, Margaret J. Mazurie, to be sentenced in absentia, filed.
	Judgment as to Deft. Martin Dewalt Mazurie: Written consent to be sentenced in absentia accepted by the Court, deft. to pay a fine of $100.00 on Count 1 of the Information, without costs, ent. and filed, cert. copies to U.S. Marshal.
	Judgment as to deft. Margaret J. Mazurie: Written consent to be sentenced in absentia accepted by the Court, deft. to pay a fine of $100.00 on Count 1 of the Information, without costs, ent. and filed, cert. copies to U.S. Marshal.
	Judgment as to deft. The Blue Bull, Inc.: Written consent to be sentenced in absentia accepted by the Court, deft. to pay a fine of $100.00 on Count 1 of the Information, without costs, ent. and filed, cert. copies to U.S. Marshal.
Dec. 8	Defendants' transcript order, filed.
	Reporter's transcript of proceedings of Dec. 4, 1972, filed.

1973

DATE	PROCEEDINGS
Jan. 8	Motion of defendants to extend time to transmit record on appeal, filed.
	Order extending time to and including February 15, 1973 for defts. to transmit the record on appeal, filed, copies to counsel and Clerk, U.S. Court of Appeals, Tenth Circuit, Denver, Colo.
Feb. 5	Reporter's transcript of trial proceedings one volume, filed.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA, PLAINTIFF, v. MARTIN DEWALT MAZURIE, MARGARET J. MAZURIE, THE BLUE BULL, INC., a corporation, and BONNIE ELLEN VELASQUEZ, DEFENDANTS.	NO. 8570 CRIMINAL. Title 18 U.S.C. Sections 1154 and 2 (Introducing Intoxicants into the Indian Country—Count I; Sale of Intoxicants to an Indian—Count II)

Filed Jun. 29, 1972, A. Marvin Helart, *Clerk*

INFORMATION

The United States Attorney charges that:

COUNT I

On or about June 10, 1972, in the District of Wyoming, on and within the exterior boundaries of the Wind River Indian Reservation and within the Indian Country, MARTIN DEWALT MAZURIE and MARGARET J. MAZURIE and THE BLUE BULL, INC. unlawfully, wilfully and knowingly did introduce and each of them did wilfully cause the others of them unlawfully, wilfully and knowingly to introduce, and each of them did aid and abet and counsel and command and induce and procure the others of them unlawfully, wilfully and knowingly to introduce into the Indian Country malt and spirituous and vinous liquor and beer and ale and wine and ardent and intoxicating liquor.

In violation of Title 18 U.S.C. Sections 1154 and 2.

COUNT II

On or about June 13, 1972, in the District of Wyoming, on and within the exterior boundaries of the Wind River Indian Reservation and within the Indian Country, BONNIE ELLEN VELASQUEZ unlawfully and wilfully and knowingly did sell and dispose of and exchange and barter to Duwayne Harris, an Indian person, who is a ward of the

Government under charge of an Indian Superintendent and over whom the Government exercises guardianship through its departments, 1 six-pack of Coor's beer in 12 oz. cans. In violation of Title 18 U.S.C. Section 1154.

/s/ Richard V. Thomas
RICHARD V. THOMAS
United States Attorney
District of Wyoming

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA, PLAINTIFF,	
VS.	No. 8570 Criminal
BONNIE ELLEN VELASQUEZ, ET AL., DEFENDANTS.	

Filed Oct. 13, 1972, A. Marvin Helart, *Clerk*

JUDGMENT AND ACQUITTAL

The above-entitled cause having come on regularly for trial before the Court, without intervention of a jury, a jury having been waived expressly and in writing by the defendant Bonnie Ellen Velasquez, with the consent of the plaintiff and the approval of the Court, and the matter having been duly tried to the Court and evidence having been adduced for and on behalf of the plaintiff and the defendants herein, and the defendant Bonnie Ellen Velasquez having moved for Judgment of Acquittal, and the Court having heard and considered the arguments of counsel, and the Court being fully advised in the premises DOTH FIND:

That from all of the evidence, facts and circumstances of the case, and the reasonable inferences to be drawn therefrom, that the plaintiff has failed to prove defendant Bonnie Ellen Velasquez's guilt as to the offense charged in Count II of the Information herein beyond a reasonable doubt; NOW, THEREFORE, IT IS

ADJUDGED by the Court that the defendant Bonnie Ellen Velasquez be, and she hereby is, acquitted of the offense charged in Count II of the Information filed herein; it is

ORDERED that the defendant Bonnie Ellen Velasquez be, and she is hereby, discharged.

Dated: October 13, 1972.

Ewing T. Kerr
Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

Govmts Exhibit No. V
Docket 8570
U.S. District Court
Cheyenne, Wyoming

UNITED STATES OF AMERICA, PLAINTIFF, v. MARTIN DEWALT MAZURIE, MARGARET J. MAZURIE, THE BLUE BULL, INC., a corporation, and BONNIE ELLEN VELASQUEZ, DEFENDANTS.	NO. 8570 CRIMINAL Title 18 USC Section 1154 & 2 (Introducing intoxicants into the Indian Country—Count I; Sale of Intoxicants to an Indian—Count II)

STIPULATION OF PARTIES

It hereby is stipulated by and among the United States of America, and MARTIN DEWALT MAZURIE, MARGARET J. MAZURIE, THE BLUE BULL, INC., a corporation, and BONNIE ELLEN VELASQUEZ that:

1. On February 13, 1971 the Arapahoe General Council of the Arapahoe Tribe adopted Resolution No. 3081, thereby adopting and passing for the tribe Ordinance No. 26, and on February 26, 1971, the Shoshone General Council of the Shoshone Tribe adopted Resolution No. 3081, thereby adopting and passing Ordinance No. 26, all as shown by a copy of Resolution No. 3081 together with Ordinance No. 26 attached hereto as Exhibit I.

2. Ordinance No. 26 was published in the Federal Register as required by Title 18 U.S.C. Section 1161 on Thursday, January 27, 1972 as shown by a copy of the publication attached hereto as Exhibit II.

3. On April 12, 1972 an application for a tribal license to engage in the sale of intoxicating beverages was filed with the Joint Business Council of the Shoshone and Arapahoe Tribes by the Blue Bull, Inc., acting through Margaret J. Mazurie, President of the Blue Bull, Inc., as shown by a certified copy of an extract of the minutes of the Joint

Business Council of the Shoshone and Arapahoe Tribes, attached hereto as Exhibit III.

4. On April 17, 1972, the application of the Blue Bull, Inc., for a tribal license to engage in the sale of intoxicating beverages was denied by the Joint Business Council of the Shoshone and Arapahoe Tribes as shown by a certified copy of an extract of the minutes of the Joint Business Council of the Shoshone and Arapahoe Tribes for that date, attached hereto as Exhibit IV.

5. Archie L. Keep, Special Agency Officer, Wind River Indian Reservation, Wyoming, would testify under oath that on June 10, 1972, he purchased a six pack of Coors beer in 12 ounce cans from Martin Mazurie, the defendant herein, at the Blue Bull Bar for $1.50; that prior to the purchase the beer was in an upright cooler and other cans of Coors beer were evident; that the purchase was made inside the Blue Bull Bar; and that Martin Mazurie stated that he was only selling package liquor and that possibly the bar would be opened up later; and would further testify that on April 3, 1972, he advised Margaret J. Mazurie that if she did not apply for a Tribal liquor license, she would be subjected to a felony charge.

6. Frank Hurtado, Wind River Indian Reservation, Wyoming, would testify under oath that he is an enrolled Shoshone Indian; that he resides in the vicinity of Fort Washakie, Wyoming; that on June 10, 1972, he purchased a six pack of Coors beer in 11 ounce bottles from Martin Mazurie at the Blue Bull Bar for a price of $1.50.

7. Duwayne Harris, Wind River Indian Reservation, Wyoming would testify under oath that he is an enrolled Shoshone Indian; that he resides in the vicinity of Fort Washakie, Wyoming; that on June 13, 1972 he purchased a six pack of Coors beer in 12 ounce cans from Bonnie Ellen Velasquez, the defendant herein, at the Blue Bull Bar for $1.50.

8. Exhibits I, II, III and IV Attached hereto may be received in evidence as Government's Exhibits I, II, III and IV.

9. The Blue Bull Bar is located within the exterior boundaries of the Wind River Indian Reservation, Wyoming, on land owned in fee by the Blue Bull, Inc., a Wyoming corporation.

10. That the Blue Bull, Inc., owns the land in fee simple

as successor in interest from Hazel Large Stewart who obtained a patent from the United States, as shown by defendants' Exhibits "A", "B", and "C" attached hereto.

11. That the defendants and their predecessors in interest are operating under a valid and current retail liquor license issued by the County Commissioners of Fremont County, Wyoming, which liquor license has been issued each year by said County Commissioners from 1954 through 1973 and is still current as shown by a statement of the County Clerk of Fremont County, Wyoming, attached hereto as Exhibit "D".

12. That up until the printing of Ordinance No. 26 in the Federal Register on January 27, 1972, Ordinance No. 398 adopted on November 3, 1953 was in full force and effect, a copy of said ordinance is attached hereto and marked Exhibit "E".

13. That all of the plaintiff's exhibits previously contained herein and all of the defendants' exhibits previously set out herein shall be admitted without objection.

UNITED STATES OF AMERICA

BY: /s/ Richard V. Thomas
RICHARD V. THOMAS
United States Attorney
District of Wyoming
Attorney for the United States of America

MARTIN DEWALT MAZURIE, MARGARET J. MAZURIE and THE BLUE BULL, INC., a Corporation, Defendants

BY: /s/ Charles E. Hamilton
CHARLES E. HAMILTON
Broadway and Park
Riverton, Wyoming 82501
Attorney for said Defendants

BONNIE ELLEN VELASQUEZ, Defendant

BY: /s/ John R. Hursh
JOHN R. HURSH
Post Office Box 328
Cheyenne, Wyoming 82001
Attorney for said Defendant

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF WYOMING

UNITED STATES OF AMERICA

v.

MARTIN DEWALT MAZURIE, ET AL.,

No. 8570 Criminal

Filed Dec. 4, 1972, A. Marvin Helart, *Clerk*

On this 4th day of December, 1972 came the attorney for the government and the defendant ~~appeared in person and~~ [1] Martin Dewalt Mazurie not appearing but his written and signed consent to be sentenced in absentia having this day been accepted by the Court and filed herein,

IT IS ADJUDGED that the defendant upon his plea of [2] not guilty and the Judgment of Conviction entered and filed by the Court on Nov. 22, 1972, has been convicted of the offense of Introducing Intoxicants into the Indian Country, in violation of Title 18, Sections 1154 and 2, United States Code, as charged [3] Count I of the Information ~~and the court having asked the defendant whether he has anything to say why judgment should not be pronounced~~, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant ~~is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of~~ [4] pay a fine of $100.00 on Count I of the Information, without costs.

---

[1] Insert "by [name of counsel], counsel" or without counsel, the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number " if required.

[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any

~~It Is Adjudged that [5]~~

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to [6]

Ewing T. Kerr
United States District Judge.

....., *Clerk.*

---

other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[5] Enter any order with respect to suspension and probation.

[6] For use of Court to recommend a particular institution.

UNITED STATES DISTRICT COURT
FOR THE
DISTICRT OF WYOMING

UNITED STATES OF AMERICA v. MARGARET J. MAZURIE, ET AL.	No. 8570 Criminal.

Filed Dec. 4, 1972, A. Marvin Helart, *Clerk*

On this 4th day of December, 1972 came the attorney for the government and ~~the defendant appeared in person and~~ [1] Defendant Margaret J. Mazurie not appearing, but her written and signed consent to be sentenced in absentia having this day been accepted by the Court and filed herein,

IT IS ADJUDGED that the defendant upon ~~his plea of~~ [2] her plea of not guilty and the Judgment of Conviction entered and filed by the Court on Nov. 22, 1972, has been convicted of the offense of Introducing Intoxicants into the Indian Country, in violation of Title 18, Sections 1154 and 2, United States Code, as charged [3] Count I of the Information ~~and the court having asked the defendant whether he has anything to say why judgment should not be pronounced~~, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant ~~is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of~~ [4] pay a fine of $100.00 on Count I of the Information, without costs.

---

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[2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

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The Court recommends commitment to [6]

Ewing T. Kerr
United States District Judge.

....., *Clerk.*

---

term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[5] Enter any order with respect to suspension and probation.

[6] For use of Court to recommend a particular institution.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF WYOMING

UNITED STATES OF AMERICA v. THE BLUE BULL, INC., ET AL.	No. 8570 Criminal

Filed Dec. 4, 1972, A. Marvin Helart, *Clerk*

On this 4th day of December, 1972 came the attorney for the government and the defendant ~~appeared in person and~~ [1] The Blue Bull, Inc., a corporation not appearing, but its written and signed consent to be sentenced in absentia, by its President, Margaret J. Mazurie, having this day been accepted by the Court and filed herein,

IT IS ADJUDGED that the defendant upon ~~his plea of~~ [2] its plea of not guilty and the Judgment of Conviction entered and filed by the Court on Nov. 22, 1972, has been convicted of the offense of Introducing Intoxicants into the Indian Country in violation of Title 18, Sections 1154 and 2, United States Code, as charged [3] Count I of the Information ~~and the court having asked the defendant whether he has anything to say why judgment should not be pronounced,~~ and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant ~~is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of~~ [4] Pay a fine of $100.00 on Count 1 of the Information, without costs.

---

[1] Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

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The Court recommends commitment to [6]

Ewing T. Kerr
United States District Judge.

....., *Clerk.*

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[5] Enter any order with respect to suspension and probation.

[6] For use of Court to recommend a particular institution.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA, PLAINTIFF, v. MARTIN DEWALT MAZURIE, MARGARET J. MAZURIE, THE BLUE BULL, INC., a corporation, and BONNIE ELLEN VELASQUEZ, DEFENDANTS.	No. 8570 Criminal

Filed, Dec. 4, 1972, A. Marvin Helart, *Clerk*

NOTICE OF APPEAL

Notice is hereby given that Martin Dewalt Mazurie, Margaret J. Mazurie and The Blue Bull, Inc., defendants above named, hereby appeal to the United States Court of Appeals for the Tenth Circuit from the Judgment of Conviction With General Findings entered in this action on the 22nd day of November, 1972.

DATED this 30th day of November, 1972.

MARTIN DEWALT MAZURIE,
MARGARET J. MAZURIE, and THE
BLUE BULL, INC., a Corporation,
Defendants

BY: CHARLES E. HAMILTON
Broadway and Park
Riverton, Wyoming 82501
/s/ Charles E. Hamilton
Attorney for Defendants

CERTIFICATE OF SERVICE

This is to certify that on this 30th day of November, 1972, I served a copy of the foregoing Notice of Appeal upon the attorney for the Plaintiff by depositing the same in the United States mail, postage prepaid, addressed to said attorney as follows: Mr. Richard V. Thomas, United States Attorney, P.O. Box 668, Cheyenne, Wyoming 82001.

/s/ Charles E. Hamilton
CHARLES E. HAMILTON
Attorney for Defendants
Broadway and Park
Riverton, Wyoming 82501

[33]

DIRECT EXAMINATION

By Mr. Thomas:

Q. Mr. Rist, it is important really that everyone in the Courtroom be able to hear your testimony, so you might speak a bit more loudly than you usually do, or maybe in your business you speak loudly all the time anyhow. Would you please state your full name?

A. My name is Severt R. Rist.

Q. And where do you live, sir?

A. I live on the Fort Washakie school district campus.

Q. And where is that located, the campus, sir?

A. The school district campus is approximately two miles from the Fort Washakie Indian Agency.

Q. And in which direction, sir?

A. Northwest.

Q. Northwest. Are you employed, Mr. Rist?

A. Yes, I am.

Q. And what is your employment?

A. I'm the superintendent of schools of Fort Washakie School District No. 21.

Q. Could you tell the Court what is encompassed within that school district, Mr. Rist?

A. What is encompassed? You mean in the way of land?

Q. Yes, sir.

A. I can't tell you a definite number of acres. We serve [34] approximately—well, probably most of the Shoshoni Indian area of the Reservation.

Q. All right, sir. I didn't know whether you were familiar with that fact or not. I believe we have other information available that will assist the Court.

As superintendent, Mr. Rist, are you familiar with the enrollment of the school?

A. I am familiar with it through our enrollment forms and in looking at the enrollment forms and knowing what our numbers are, to that extent.

Q. Yes. Now, these are records, I assume, that are kept in the course of the operation of the school district business?

A. Yes, that's right.

Q. And I know that you have recently been asked to look at the enrollment forms; is that correct, sir?

A. Yes.

Q. Mr. Rist, can you tell the Court how many children are enrolled in School District No. 21?

A. At the time we were asked for the enrollment there were 243 students in grades K through 8.

Q. And do your records indicate, Mr. Rist, whether those students are Indian people or non-Indian people?

A. Yes, they do.

Q. Did you determine how many are Indian people?

A. We did from the enrollment records that we have, yes.

[35] Q. And how many were shown on the enrollment record as Indian people?

A. Out of the 243 there were 223 that were shown as belonging to one Indian Tribe or another.

Q. And the remaining twenty would have been shown as what, sir?

A. Some weren't identified and some were shown as white and some were shown as non-Indian.

Q. When you say one Indian Tribe or another, do you recall which Tribes were indicated there?

A. The Shoshoni Tribe is predominant in the school. There are Arapahoes which are probably the second largest group, and then there are scattered numbers of other Indian Tribes represented there, Sioux, Cheyenne, I think there is Hopi, we have Navaho children.

Q. Now, you refer to enrollment cards. Now, how are those cards prepared, Mr. Rist?

A. Well, they are actually not a card. They are an 8½ x 14 sheet.

Q. Yes, sir.

A. These are sent home with the students to be completed by them and their parents and then returned to the school.

Q. And then returned to the school?

A. Yes.

Mr. Thomas: I believe I have no further questions.

[36] The Court: How far is your school from The Blue Bull Bar?

A. Approximately two and a half miles, I would say.

CROSS-EXAMINATION

By MR. HAMILTON:

Q. Your name is Rist, R-I-S-T, sir?

A. Yes.

Q. Thank you. You are superintendent of schools for State School District No. 21, aren't you?

A. Yes, I am.

Q. And your salary is paid by the State of Wyoming, isn't it?

A. By the School District 21.

Q. That is a State of Wyoming school district?

A. It is a Fremont County school district. The Board of Trustees are an arm of the State.

Q. O.K. You come under the State Superintendent of Public Instruction?

A. Yes.

Q. All right. Now, the land that the school is situated on, do you know whether or not that is fee-patented land owned by the State?

A. I do not know.

Q. And you say you are two miles from the Governmental Headquarters northwest?

[37] A. Yes.

Q. And you are two and a half miles from The Blue Bull?

A. Approximately that, yes.

Q. And the road between that goes by the school, is that a paved road?

A. Yes.

Q. Is that a County road?

A. I can't tell you that, sir.

Q. O.K.

A. I don't know.

Q. Now, you say that there are 243 students and 20 of them are not Indians?

A. Yes.

Q. Do you know how many of those who purportedly are Indians are enrolled Indians?

A. I wouldn't know the exact number, no.

Q. O.K. Now, do you know whether or not—do you know what the requirement for Indian blood is in order to be an enrolled Indian in the Shoshoni and Arapahoe Tribes?

A. If it hasn't changed, I believe it is still one fourth Indian blood.

Q. From the father's side?

A. I can't answer that.

Q. Do you know?

A. No.

[38] Q. O.K. You don't have any idea then how many of these 223 students of yours are a quarter blood or less, do you?

A. No, I don't.

Q. And if they are a quarter blood or less, then they are not entitled to enrollment, are they?

A. With the Shoshoni or Arapahoe Tribes, I assume they wouldn't be.

THE COURT: I think they are different in different Tribes. I had a lawsuit on that.

MR. HAMILTON: That is the rule on this Reservation, Your Honor. I just wanted to see if he knew.

Q. (By Mr. Hamilton) Therefore they would not be Shoshoni or Arapahoe Tribal members?

A. If they were less then one quarter blood, I assume they would not be.

Q. But you don't have any idea how many of those kids might be? It might be all or half of them? You don't have no idea?

A. I have an educated guess, but that probably wouldn't please the Court, sir.

Q. No, thank you.

How many students—just tell me something, Mr. Rist; about your enrollment out there. Is it going up or down?

A. This is my first year on the job, since August 7, 1972. Looking at past enrollments for the past few years, it looks like [39] it is about a level situation with enrollment, up or down.

Q. About the same. But no drastic changes over the last five years?

A. Not that I know of.

Q. Do you know whether or not—well, let's see, you said your school was a State school. It is a school district under the State Department of Education?

A. Right, public school district.

Q. A public school district. And do you know whether or not the Shoshoni and Arapahoe Tribes or the United States Government contributes any funds for the support of that school, or is it through tax of fee-patented land in that area?

A. The United States Government contributes through Public Law 874 which is in lieu of taxes for impacted areas.

Q. Riverton also gets that, doesn't it?

A. Yes. In addition to that we do have the State and County and school district tax structure that supports the school financially.

Q. Like all over the State?

A. Yes.

Q. Now, those impacted area funds are also available in Riverton and also available in some other communities in the State?

A. Yes, sir. Any Federally impacted area, not necessarily Indian Reservations. Cheyenne is one.

[40] Q. Thank you.

MR. HAMILTON: No further questions.

THE COURT: You are excused, Mr. Rist, if there is no objection.

MR. THOMAS: I think I did want to ask one question.

THE COURT: Very well.

REDIRECT EXAMINATION

By MR. THOMAS:

Q. Did I understand your answer correctly that the only Federal funds you receive are those that you described?

A. We receive other Federal funds in smaller amounts. There are some Johnson O'Malley and there has been Title 3 funds under N.D.E.A.

Q. What are they?

A. National Defense Education Act or something.

Q. All right, sir.

A. They provide for basic areas of learning. They provide matching funds for primarily equipment.

Q. Do you receive any funds to your knowledge from the Bureau of Indian Affairs?

A. We did this past summer to my knowledge through the summer school program. As I understand, there was some

funds both from the Tribe and the Bureau of Indian Affairs that was put into the summer program. I wasn't here, but this is the [41] recollection I have in discussing the program with others.

Q. All right, sir.

MR. HAMILTON: In that case, Your Honor, I object and ask his answer be stricken as hearsay.

THE COURT: Oh, it may stand.

Q. (By Mr. Thomas) I did note that you described your enrollment which I understand K is Kindergarten?

A. Right.

Q. Through 8th grade?

A. Yes.

Q. You do not have in School District 21 a high school?

A. School District 21 is a supporting elementary district and it supports the Lander Valley High School.

Q. Do you know, Mr. Rist, where the high school age students from School District 21 do attend?

A. I would say those that do attend high school, the majority do attend the Lander Valley High School. There are some that attend other high schools on the Reservation and out-of-state.

MR. THOMAS: Yes, sir. I think I have no further questions. I would ask Mr. Rist to be permanently excused.

THE COURT: You may return to your school.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

MR. THOMAS: The next witness would probably be [42] about the same length. I did not know whether the Court would like to take a recess at this time.

THE COURT: We might take a few minutes recess. Court will stand in recess a few minutes.

(WHEREUPON, trial proceedings recessed at 10:45 o'clock a.m., and reconvened at 11:00 o'clock a.m., October 12, 1972.)

MR. THOMAS: Would you, Mr. Reporter, mark this as Government's Exhibit VI and this as VII?

(WHEREUPON, Government's Exhibits VI and VII were marked for identification by the reporter.)

MR. THOMAS: May it please the Court: The Government

would offer at this time Exhibit No. VI which is a description of the boundary of School District No. 21, certified by the Fremont County Assessor, and also Exhibit VII which is a map relating to Exhibit VI from which the school district can be defined, and I believe there is no objection except that on this map there is a legend which shows Shoshoni households and Arapahoe households. The understanding is the Court will not rely upon Exhibit VII for that purpose. It is rather small and probably wouldn't be discernible anyhow.

THE COURT: Very well. The exhibits may be received in evidence.

[43] (WHEREUPON, Government's Exhibits VI and VII were received in evidence.)

MR. THOMAS: Then the Government would call as its next witness Mr. Range.

(Witness sworn.)

EDWARD M. RANGE,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. THOMAS:

Q. Mr. Range, it is necessary, of course, that everyone be able to hear you, so you might want to speak more loudly than you do in normal conversation.

Would you state your full name?

A. Edward M. Range.

Q. And where do you live, Mr. Range?

A. At the Wind River Agency, Fort Washakie.

Q. Are you employed, sir?

A. I'm employed by the Bureau of Indian Affairs.

Q. And what is your job?

A. Title is, Housing Development Specialist.

Q. I wonder if you would just tell the Court briefly what you do in connection with that job, Mr. Range?

A. It covers a number of things. We have what we call a [44] home improvement program where we improve Indian homes. This is through Federal grants and welfare money.

We also have some other Federal programs where we work with housing and urban development to provide homes for the people on the Reservation.

Q. All right, sir. In connection with your employment, have you had occasion to make a survey of housing on Wind River Reservation?

A. Yes.

Q. Would you tell the Court what you did in connection with that, sir?

A. We made up, I guess you would call it, an inventory card so that we could record the conditions of housing throughout the Reservation. I personally, with the assistance of people along with me, covered 704 homes on the Reservation, and along with a photograph of each home, we evaluated them as to their living conditions, standard of the home, whether proper heating, plumbing, and so on and also checked as to who lived in these homes, family name and so on.

Q. When did you make this survey?

A. It would be a year ago this past spring in April and May mainly.

Q. April and May of 1971?

A. That would be correct.

Q. All right, sir. I believe that you did prepare a map; [45] is that right, sir?

A. That's correct.

Q. And may I have that, sir?

MR. THOMAS: Would you mark that as Government's Exhibit VIII?

(WHEREUPON, Government's Exhibit VIII was marked for identification by the reporter.)

Q. (By Mr. Thomas) Mr. Range, there has been mounted on the board there what is marked for identification as Government's Exhibit VIII. Do you recognize Government's Exhibit VIII?

A. I do.

Q. And is this something that you prepared?

A. It is.

Q. Would you tell the Court what is shown on Government's Exhibit VIII, Mr. Range?

A. The approximate center of this which shows the pink covered by type is twenty square miles of area. I was asked for the identification of the Indian community.

Q. All right, sir. Now, let me see if I understand. When you say a twenty square mile area, you ran the pink strips along section lines substantially; is that correct?

A. That is correct.

Q. And it is five sections from top to bottom?

A. Correct.

[46] Q. And four sections from right to left?

A. Correct.

Q. Where did you get the map to use for this purpose? Do you know?

A. The map was given to me by Mr. Keep.

Q. All right, sir.

Is Forth Washakie depicted in that map?

A. Yes, sir.

Q. And perhaps you could, if you can reach it with a pointer, it is a little better just to indicate for the Court where Fort Washakie is located.

A. Located right in this section right here. (Indicating.)

Q. All right, sir. Speaking then to the area encompassed in the pink lines. Did the housing survey that you described cover that area?

A. Yes, sir.

Q. Would my understanding be correct that it covered every house, dwelling within the area?

A. No, sir.

Q. Tell me what the fact is, then.

A. The omittance was those between my own knowledge and the knowledge of an individual with me all the time which he deliberately pointed out was not an Indian.

Q. So your survey included only Indian dwellings?

A. Yes, sir.

[47] Q. But with respect to Indian dwellings, it did cover the area enclosed by the pink?

A. That's correct.

Q. Did you determine how many Indian dwellings were in that area?

A. That's correct.

Mr. Hamilton: I'm going to have to object to that as to

the conclusion of Indian dwellings. I don't think proper foundation has been laid for that question.

THE COURT: I think he testified it did include Indian dwellings.

MR. HAMILTON: I think that may be an assumption.

THE COURT: I think we have a general understanding of what——

MR. THOMAS: I believe he earlier testified that he did go through and did check each place where people were living and he asked for a questionaire [sic]; is that right, to be completed?

THE WITNESS: That's correct.

MR. THOMAS: With respect to those places, and what he just said is he did not include in his survey those places which were known to him or one of the people working under him were not inhabited by Indian people.

Q. (By Mr. Thomas) I'm back to my question, then, I believe, Mr. Range, did you determine how many Indian dwellings [48] were within the pink area?

A. No. May I answer?

Q. Yes.

A. It is families.

Q. Yes. How many Indian families?

A. How many Indian families?

Q. All right, sir.

A. We have what we call 170 and ½ Indian families.

Q. I suppose you better tell the Court how you got half an Indian family.

A. We had a family where there was a mixed marriage. We gave half a point to that family as an Indian family. The other half as a non-Indian family.

Q. All right, sir. So you identified again how many Indian families?

A. 170 and ½.

Q. Did you identify non-Indian families?

A. Yes, sir.

Q. How many were there?

A. 41 and ½.

Q. And that encompasses the population within the pink lines on the map?

A. This is correct.

Q. With respect to those dwellings, Mr. Range, you mention where you or someone with you knew it was an non-Indian [49] family. Did you include those in the 40?

A. May I answer in my words?

THE COURT: Go right ahead.

THE WITNESS: The survey, I bypassed the Indian homes, and in the making up of this report for the area, then I went back through maps, through personal interview—not interview, but checking with homes we had bypassed. There again checking things such as the agency, such as the school, which we never covered in our original survey, and checked records there to find the families listed and Indian families and non-Indian families. This is where we come up with the one.

Q. (By Mr. Thomas) That information was included in your non-Indian family list there?

A. Correct.

MR. THOMAS: I believe I have no further questions of Mr. Range at this time.

THE COURT: But your instructions were not to include non-Indians, or shall I say, deeded land to non-Indians? You didn't make a survey?

THE WITNESS: On my original housing survey I bypassed all that were either obvious to me or the person with me which I usually tried to find a resident of that local area to aid me in finding them.

CROSS-EXAMINATION

By MR. HAMILTON:

[50] Q. Mr. Range, you say "Indian families," and what is your criteria for an Indian family?

A. Mainly from the people's statements and from, there again, the individual who happened to be with me who I knew was enrolled.

Q. You don't have any information, though, on how many of those 170 and ½ or one and a half families, you don't have any information in regards to the individuals involved and whether or not they are enrolled, do you?

A. Not with me, no.

Q. And you don't know?

A. Only through working with the enrollments, because I have run, remember, things in regard to looking up families. Every house we work on I have to be checked they are Indian and they are eligible for our program.

Q. This isn't square, is it?

A. No, sir.

Q. Why didn't you make it square and make it as far east of Fort Washakie as you did west? For the record I'm referring to the pink circle or pink square which was—pick rectangle that was previously supposed to depict a twenty mile square area which it doesn't.

A. The idea being that The Blue Bull which falls just about directly on this section line right here, we tried to get an even area and we originally talked about going two miles on [51] either side. The Blue Bull is located approximately in the center of the section line on the north and south. Therefore, rather than go a mile and a half we went two and a half south and two and a half north and three miles east and west.

Q. How many other businesses are in that area of all types? Motels, grocery stores, trading posts. Do you know, sir?

A. It would take me a while to run it in my mind.

Q. If I told you eight would that be pretty accurate?

A. All businesses, whether Indian or non-Indian?

Q. Businesses individually owned and operated businesses.

A. I would say that would be very close, yes, sir.

Q. How many of those eight or nine are operated by Indians? Do you know?

A. My best judgment I would say about three to four are operated by Indians.

Q. Three to four of them are operated by Indians. Can you tell us which those are?

A. It would be J.C. Colson.

Q. J.C. Colson, is he an Indian?

A. Yes, sir.

Q. Is he an enrolled Indian?

A. Not on our Reservation, I don't believe, sir.

Q. O.K. Now, who else?

A. Miss Cla-emont.

Q. And she is an enrolled Indian?

[52] A. Yes, sir.

Q. Who else?

A. I mentioned Joe Ingaball.

Q. Where is his place of business?

A. He has a station right at the entrance to the agency, a filling station, just outside the actual compound.

Q. Other than those three, then, and the first one is a non-Indian so far as this Tribe and this Reservation is concerned, there are only two, then; is that right?

A. I could not say definitely for sure.

Q. That is your recollection at this time?

A. Right.

Q. The other six or seven are owned by individuals?

A. Yes, sir. One more Indian I can think of, Galexos of the laundromat.

Q. Is he an enrolled Indian in this Reservation?

A. Yes, sir.

Q. But, as I recall your previous testimony, sir, you don't know now out of these 170 and ½ Indian families you testified to how many are actually enrolled Indians?

A. This is correct, enrolled in our Tribe.

Q. Enrolled in these Tribes?

A. Yes.

Q. Which would be subject to the authority of these Tribes. Let me ask you this, Mr. Range? There are highways [53] across the Reservation, aren't there?

A. Yes, sir.

Q. Are those depicted on this map, sir?

A. I believe so.

Q. You pointed out where The Blue Bull was. Maybe you better get your pointer out for the Court again. Would you point that out for me again?

A. Approximately right in this area here.

Q. Right in this area here?

A. Yes.

Q. And the fort is over here?

A. Correct.

Q. So it is about three quarters of a mile to over where The Blue Bull is?

A. Half, three quarters, yes.

Q. Is there a highway—this is the State Highway, 789, isn't it?

A. Yes, sir.

Q. Now, there is a paved road that goes from State Highway 789 past the Fort or the complex or the compound; is that how it is referred to?

A. Yes, sir, agency.

Q. The agency. And it goes on out past The Blue Bull?

A. This is correct.

Q. That is an oiled highway?

[54] A. Correct.

Q. Who owns that?

A. The legality of that I couldn't testify to. This is getting out of my department.

Q. Do you know who maintains it?

A. To the best of my knowledge the County.

Q. Do you know how much land in that twenty section space there is deeded land?

A. No, sir.

Q. Have you ever had an opportunity to check that?

A. No, sir.

Q. Do you know how much of it is individually held trust land?

A. No, sir.

MR. HAMILTON: No further questions.

REDIRECT EXAMINATION

By MR. THOMAS:

Q. Mr. Range, there is one thing I want to be sure I understand. You have a calculation of the number of families which is 211 total; is that right?

A. Add the two figures, that would come out to that, yes.

Q. I had better have you look because I'm not sure I remember.

A. 170 and ½, 41, 212.

Q. What I'm not sure I'm clear on, does that include all

[55] the families within the pink area?

A. This is correct.

Q. It does not include any non-Indian families?

A. No, sir, not to the best of my knowledge.

Q. Because of your survey as these steps you describe, you determined there were 212 families in the pink area?

A. This is correct.

Q. Divided as you have testified?

A. This is correct.

MR. THOMAS: I think I have no further questions.

THE COURT: Any objection to permanently excusing Mr. Range?

(No response.)

THE COURT: You may return to the Reservation when you are ready.

THE WITNESS: Thank you, sir.

(Witness excused.)

MR. THOMAS: I believe at this time, Your Honor, the Government would call Mr. Hobbs.

(Witness sworn.)

CLYDE W. HOBBS,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. THOMAS:

[56] Q. Would you state your full name, sir?

A. Clyde W. Hobbs.

Q. And where do you live, Mr. Hobbs?

A. Presently I live in Lander.

Q. What is your employment, sir?

A. I'm the superintendent of the Reservation, general administrator of the Reservation and programs.

Q. Is that Wind River Indian Reservation?

A. Yes, sir, it is.

Q. How long have you been superintendent at the Wind River Reservation, Mr. Hobbs?

A. Since June, 1961. That would be eleven years and about four months, I guess.

Q. I wonder if you could tell the Court as briefly as pos-

sible what your duties are as superintendent of the Wind River Indian Reservation.

A. Well, cooperation with the Tribe in many of their own programs and administering the various programs of the agency, a final review in most cases of the various programs, law and order, credit, realty, financial, personal financial management of Tribal funds and individual funds on deposit, this sort of administration. There is about eleven or twelve different programs.

Q. Now, do you deal with more than one Tribe, Mr. Hobbs?

A. Yes, I do. I deal with the northern Arapahoe Tribe [57] and Wind River Shoshoni. They own that Reservation jointly.

Q. I believe you were present during the rest of the testimony in the case, were you not?

A. Yes, sir.

Q. So you heard Mr. Rist testify about the school district?

A. Yes.

Q. Are you familiar with that school district, Mr. Hobbs?

A. Well, quite familiar. The district as it exists was set up some, oh, seven or so years before I came there, but I'm quite familiar with the district now.

Q. It was set up before you became superintendent but you have had occasion to work with it since you became superintendent?

A. Yes.

Q. Would you tell the Court how the school district came into existence?

A. With the consent of the residents of that community they asked for the district to be established to take over what had previously been the bureau school. The bureau did run a day school. They asked this be set up.

The bureau held a piece of Tribal land for the administration of that school, and when this was consented a public school district be expanded and set up to serve the whole community, then the Tribe too consented to turning land over to the [58] public school district for the base for where the school set and that sort of thing.

Q. When you speak of the bureau, that is the Bureau of Indian——

A. Yes, I could say the Indian agency is what I'm referring to there.

Q. All right. If I misstate this, correct me. But my understanding was that there was an Indian school operated by the Bureau of Indian Affairs and there was a tract of land set aside for the support of that school?

A. That's correct.

Q. That there came a time when the tract of land with the concurrence of those people living there was committed to School District 21?

A. That is correct.

Q. For the purpose of supporting a public school. Mr Hobbs, do you know what would occur with respect to that tract of land if School District 21 were abolished?

A. Yes.

MR. HAMILTON: Your Honor, I am going to have to object. I think he is calling for a conclusion on the part of the witness. There must be some sort of document or evidence.

THE COURT: I'll try not to be influenced by it. Do you know?

THE WITNESS: Yes, sir.

[59] THE COURT: You may answer.

THE WITNESS: The land is being used by the school district in very similar situation as the way the bureau used it. It belonged to the Tribe. When no longer used for the school, then the land reverts back, you know, to the Tribe for whatever use they would make of the land.

Q. (By Mr. Thomas) All right. Mr. Hobbs, with respect to some other Governmental functions, are you familiar with how health services are furnished on Wind River Indian Reservation?

A. Yes, sir.

Q. How are they furnished, sir?

A. Since the early '50s the Department of Health, Education and Welfare, Department of Indian Health, subdivision; prior to that the Bureau of Indian Affairs.

Q. Is this made available to all persons or is it restricted to Indian persons?

A. It is restricted to Indian persons.

Q. Mr. Hobbs, are you familiar with law enforcement functions on Wind River Indian Reservation?

A. Yes, sir. I am in charge of the law enforcement of the Federal Government and Tribe.

Q. Can you tell me how law enforcement is administered?

A. For the crimes other than the major crimes, ten or eleven major crimes, it is administered under CFR Title 25, the secretary's code. It spells out, you know, the Court procedure [60] and so forth, and in this instance, the Judges, three Judges of this Court of Indian Offenses, appointed by the two thirds or more vote of the Council, that is the Court. And there is Court fines that are used to pay the expenses and the Bureau of Indian Affairs then employ policemen, you know, that carry out.——

Q. There are Indian policemen on the Reservation?

A. Yes, sir. There is five.

Q. Mr. Keep also works in law enforcement; is that correct?

A. Yes, he does. Primarily his duties are to the major crimes on the Reservation.

Q. Is my understand [sic] correct there is a series of ordinances adopted which prescribe conduct within the Reservation?

A. Yes, sir, there are.

Q. Is my understanding also corerct that there are some State officers who on occasion perform law enforcement functions on the Reservation?

A. Yes, sir, they do.

Q. How is that accomplished, Mr. Hobbs?

A. As far as the State officers enforcing the laws as pertains to non-Indians, it is the same as any other community. But when they enforce the laws as pertains to Indians, with Shoshoni and Arapahoe or other Indians, so that we understand what we are talking about, we may be talking about Blackfeet or Sioux that live there, then they do this under cross-deputation. [61] The special officer deputizes the County Sheriff's deputies, Highway Patrol, County Sheriffs, Fish and Game personnel. These State and County officials are deputized. Likewise these Indian policemen are deputized to serve as Deputy Sheriffs and so forth and so when the County Sheriff's staff or the Highway Patrol make an arrest, they make the arrest in the name of the Court of Indian Offenses.

Q. Unless it is a white person?

A. Unless it is a white person, yes, sir.

Q. And are there instances when a white person might be arrested in accordance with the authority granted by the Tribal Council?

A. No.

Q. All right, sir. We talked about school, public health, law enforcement. Are there any other Governmental functions that are performed on Wind River Indian Reservation that come to your mind, sir?

A. Well, certainly one of the bigger functions that we have there is administration of land, you know, and leasing, exchanges of land and this sort of thing.

Q. And is that accomplished by the Tribal Councils or by your office or how is it done?

A. Well, generally I would say it would be accomplished by the agency office, by the Bureau of Indian Affairs' office. Most of those require the consent of the Tribe, such as oil and [62] gas leases. The owners of these lands would have to consent to these leases, and predominately the Tribes owns an undivided interest, so it takes the Tribes consent and owners consent to carry out those things.

Q. Do you consult in connection with the management of lands with any Governmental units of the State of Wyoming?

A. No, not Indian land, no.

Q. All right, sir. Does there come to your mind any other Governmental functions you recognize being performed on Wind River Indian Reservation?

A. Well, of course, there is the management of the Wind River irrigation project, the Reservation project. The management of the range. You know, the range administration, similar to what the Bureau of Land Management, similar to the Bureau of Reclamation. We have those, soil and moisture conservation, similar to what the Soil Conservation Service.

Q. Who performs those?

A. The Federal staff of the agency. Many of those are still in cooperation with the Tribe, but to a somewhat lesser extent. But the Tribe, in the management of the range, the Tribe has the range committee and they decide who among

the Indian people will get a certain piece of range to run cattle. Then we administer that contract once it is made.

Q. All right, sir. Any other examples that come to your mind at the moment?

[63] A. Both Tribes operate their own credit program. They put their money into deposit and they have a board of directors similar to a banking procedure that pass on loans and loans are made and collected.

Q. This would be perhaps a business function rather than Governmental?

A. It is a trust function. Yes, sir, it is.

MR. THOMAS: All right. I believe I have no further questions of Mr. Hobbs.

THE COURT: In the course of your duties did you assume any supervisory acts over deeded land owned and occupied by non-Indians within the confines of the Reservation?

THE WITNESS: No, sir, except, you know, as it might pertain to law enforcement. It might be, if it was in the area of the Reservation, especially that diminished portion, then we would. The law and enforcement would act in those cases.

MR. THOMAS: Perhaps an example might be helpful in that regard.

MR. HAMILTON: Just a minute. I think it is going to be leading and suggestive. I am going to object.

THE COURT: I think he answered the question, only as to law enforcement.

THE WITNESS: Yes, sir.

MR. THOMAS: Then I think I have no further questions of Mr. Hobbs at this time, Your Honor.

[64] CROSS-EXAMINATION

By MR. HAMILTON:

Q. Mr. Hobbs, you said you had been there since '61?

A. Yes, sir.

Q. Is Fort Washakie an incorporated town?

A. No, sir.

Q. Are there any boundaries?

A. Yes, of the agency.

Q. There is a boundary?

A. There is a boundary to the agency, but Fort Washakie community, no, sir. There are no boundaries.

Q. So there is no positive way of determining where the community starts and stops, is there?

A. I believe not as it applies to any community, really.

Q. Well, there are no city limits, no corporate limits, no Governmental limits as such which is the town or the community of Fort Washakie, is there?

A. No.

Q. So you who have been the superintendent there for twelve years, more or less, don't know where the Indian community starts and stops so far as Fort Washakie is concerned; isn't that true?

A. That is not true.

Q. Where does it start and where does it stop? Do you know?

[65] A. In the general term, if I'm saying I'm going into the Fort Washakie community, there is an understanding, sir, as to where that community is.

Q. Understanding. Between who and whom?

A. I have never experienced any difficulty with that as I've talked to people about the Fort Washakie community, but there are no boundaries, no, sir.

Q. And there is no accurate way of determining where the edge of that community is, is there?

A. No, there isn't.

Q. All right. I think maybe I could summarize your testimony, Mr. Hobbs, by saying that all of the Governmental functions which are exerted over and benefit the deeded land inside this Reservation, and that is all the red, are performed by the State of Wyoming?

A. Sir, I'm glad you gave me another chance to answer that. I answered the Judge——

Q. O.K.

A. The Bureau of Indian Affairs does build numerous roads on the Reservation. .Some of those roads are still maintained in what we might say predominately non-Indian. Others are built in Indian communities have been turned then for maintenance to the County. So there is that function that I overlooked. So there is that function yet of maintenance of roads sometimes in non-Indian communities.

[66] Q. As a matter of fact, all the paved roads in and

around the Governmental agency at Fort Washakie, though, have been turned over and are maintained by the County?

A. That is correct.

Q. At the County's expense?

A. That is correct.

Q. And the school is run by the State of Wyoming?

A. The school?

Q. School district.

A. Run by an elected school board of School District 21.

Q. The school district is one of the school districts of the State of Wyoming, Fremont County, overseen by the State Department of Education?

A. Yes, sir.

Q. Just like any other school district?

A. Like any other public school district.

Q. All right. As a matter of fact the Fremont County Public Health Service has most of the volume of business out in the Fort Washakie area, doesn't it, Mr. Hobbs?

A. No, sir, it doesn't.

Q. The Indian Health Service does?

A. Indian Health Service it is a Federal function. Indian Health Service.

Q. Does it help non-Indians who live on deeded land within the exterior boundaries of that Reservation?

[67] A. No, sir. Once in a while on an emergency they would do it with a charge for that, but not free, no.

Q. Do they do it for non-enrolled Indians?

A. Yes.

Q. They don't differentiate whether or not they are on the Tribal rolls?

A. No, sir.

Q. O.K. Mr. Hobbs, this map here--and I hope you can see it, perhaps you would like to come down here and look a minute because it is pretty small——

MR. HAMILTON: Would that be all right, Your Honor?

THE COURT: Yes.

(Discussion off the record.)

MR. HAMILTON: At this time, Your Honor, I would like to move for the admission of Defendants' Exhibit G which is

the map previously discussed showing the entire Reservation.

THE COURT: There being no objection, it may be received in evidence.

MR. THOMAS: Your Honor, I suppose I should make a reservation. I don't think Mr. Keep has had an opportunity to examine it yet, so I do not know whether the areas are accurately marked. It is a map of the Reservation and my understanding is that a good faith effort was made to determine which are fee-lands and which aren't, but from the Government's side [68] we do not know definitively because we haven't compared it with our own map whether those are specifically accurate or not. There might be some minor discrepancies.

THE COURT: Barring the exceptions. I will let you point them out.

(WHEREUPON, Defendants' Exhibit G was received in evidence.)

MR. HAMILTON: Thank you, Your Honor.

Q. (By Mr. Hamilton) Mr. Hobbs, have you had an opportunity to look at this map the last few minutes?

A. Yes, sir, I have.

Q. And are you able to determine the Fort Washakie area from examination of that map?

A. Yes, I can.

Q. And have you noticed the amounts in red which are or the portions which have been marked out in red?

A. Yes.

Q. And these generally would reflect what you know to be deeded land, fee-patented land within that particular area of the Reservation?

A. Well, sir, you've identified them as lands colored in fee, and I realize that there are fee-lands in that Fort Washakie area. I couldn't say I could look at that map and say I know that particular piece of land is in fee, but I know there are several tracts fee there.

[69] Q. As a matter of fact, it would appear that about one third of the land in that area is already fee-patented land, wouldn't it?

A. That would be a matter of opinion. I would think maybe nearer to twenty, twenty five percent.

Q. All right. Now, we have also together examined the legend on the map and it shows the white portions to be trusts individually owned, Indian allotment or tract, and what type of land is that, Mr. Hobbs?

A. That is land by the General Allotment Act and subsequent allotments were given to the individual enrolled members of the Arapahoe and Shoshoni Tribes and held in trust by the United States.

Q. Do these lands yield patents after a certain period of time has elapsed?

A. The patent is issued on those lands subject, first of all, to the request of the owner, and, secondly, to the determination of the bureau as to whether it is in the best interest of the Indian to have a patent.

Q. Yes. But as a general rule these lands will ultimately be patented?

A. I wouldn't say it would be. You know, if I could go on, if we think how long it has been since those lands were allotted and say only twenty, twenty five percent of them are fee today, it would be a slow process, but some lands would be [70] patented, you are correct.

Q. And how many of these lands, just referring to that map, would you estimate, are of that type of ownership at this time?

A. Probably forty or fifty percent of that area is in allotted status, you know, in trust now.

Q. Yes. Now, this is not land which is held by the Tribes and trusts for the Tribes and the benefits of the Tribes, but it is land which has been set out to one particular individual?

A. Correct.

Q. For the benefit of that individual's heirs and ultimately assigns after the patent is issued; isn't that correct?

A. That is correct.

Q. Now, I think in answer to the Court's question you said that the Tribal police do not exert any jurisdiction over non-Indians on fee-patented lands in the Reservation?

A. This is correct.

Q. And you said that they don't, the Indian police, and the Indian Courts there at Fort Washakie does not have any jurisdiction over a white person, was, I think, the way you put it?

A. The police—I would like to clear this up. We are talking about police now as misdemeanors. With major crimes we are talking of another matter.

Q. Well, we are just talking about the Indian Court [71] and Indian police now.

A. Yes, this would then be limited to the minor offenses.

Q. And what is a white person?

A. Well, we don't use the term. I have answered those questions as it was put to me like that. A non-Indian is any person—the laws are based on Indians and non-Indians. They may be black or whatever.

Q. O.K. Let me ask you this, Mr. Hobbs: What is an Indian and what is a non-Indian?

A. An Indian for our records and for our information is anyone on the Reservation that is on any roll anywhere as an Indian.

Q. Only enrolled Indians, everyone else is a non-Indian?

A. That is just a part. The other Indians are those that can prove they are one fourth or more Indian. Generally this is quite a long thing to answer. Those two things will generally answer. Anybody can prove he is a fourth or more or anyone on any Indian Tribal roll, regardless of the degree of Indian blood.

Q. O.K. So that is the two being on a Tribal roll anywhere or being a quarter blood or more?

A. Yes.

Q. How many people live on that Reservation? Do you know?

A. Indians?

Q. I want to know how many people.

[72] A. No. No. We have no reason to know. We have the Bureau of Reclamation project and we take no notice of lives out there.

Q. Well, out of all that area do you know how many enrolled Indians you've got?

A. Total enrollment of the Indians is a little over five thousand. I didn't bring that with me.

Q. That is both Tribes?

A. Yes, sir. They don't all live on the Reservation, however.

Q. How many live on the Reservation?

A. About four thousand of the Shoshoni and Arapahoe and five hundred other than Shoshoni and Arapahoe.

Q. Those would be classified as Indians under your previous definition?

A. Yes, sir, making about forty five hundred.

Q. And how many of that forty five hundred live in that square?

A. I don't know.

Q. Do you have any idea what the population of that area is over and above the forty five hundred qualified Indians?

A. No, sir.

Q. O.K. Now, the fee-patented land that is in that Reservation is subject to taxation by the State of Wyoming, isn't it?

A. Yes, it is.

[73] Q. Now, you say that your agency has to do with the management of the range which is located on the Reservation?

A. Yes, sir.

Q. This is grazing land?

A. Yes, sir.

Q. Doesn't have anything to do with the management of any of that fee-patented land, does it?

A. Yes, sir.

Q. How do you manage the fee-patented land?

A. We may manage it if it lays inside the range unit. Then it is an agreement to graze all that area.

Q. I see. You do that on agreement with the landowner?

A. Yes, uh-huh.

Q. Yes. And you have no jurisdiction as such?

A. No.

Q. Over the fee-patented land located in that Reservation whatever?

A. No, no range jurisdiction whatever.

Q. No jurisdiction of any kind, isn't that true?

A. Would you restate the question?

Q. You have no jurisdiction over any of the fee-patented land located in that Reservation?

A. Are you talking about law enforcement?

Q. I'm talking about any kind of jurisdiction.

A. Yes, sir, we do have.

[74] Q. Over white people?

A. Over land. We were talking of land, I believe.

Q. Now, wait a minute. What kind of criminal jurisdiction law enforcement would you have over land?

A. I asked you if you were talking about law enforcement.

Q. All right, sir. Let's not quibble. Let's see if we can get the answer to the question. As Governmental functions apply to real estate, you have no jurisdiction over any of the deeded land in that Reservation, isn't that so, sir?

A. That is not correct.

Q. All right. What jurisdiction do you have over the land that is deeded in that area?

A. Well, we run an irrigation project is the big one, and if the water is not paid properly, so we can decide which lands would have water delivered to them, and in this case, that was the point that I didn't know—I didn't know what point you were trying to make there. We do run that irrigation project and it applies to fee-land as well as trust land.

Q. Yes. That is because of the nature of the water use?

A. Yes, it is.

Q. Other than that——

A. That is about it. I think that limits it pretty much to that.

Mr. Hamilton: All right. No further question, Mr. Hobbs.

[75] The Court: I think I might have overspoken myself in the early stages of this trial. I have been dealing with the Reservation and I made reference to 360,000 acres. Eliminating deeded land, allotted lands, and just in round numbers, what is your area there for my information? It does not have anything to do with this case.

The Witness: Judge, the outside boundaries of the Reservation, as they exist now, takes in—and I'd like to round this—2,200,000, but with the land taken out of there, it is now reduced to 1,800,000 and there is some acres over that. There is the trust land, 1,800,000, a little over.

The Court: I will stand corrected on my figures.

Redirect examination

By Mr. Thomas:

Q. Mr. Hobbs, we had some discussion which may make this significant, so I will ask you, are you familiar with the

term as applied to Wind River, the ceded portion of the Reservation?

A. Yes, sir, I am.

Q. Could you perhaps just take the marker and indicate for the Court what on the map is encompassed within the ceded portion of the Reservation?

MR. HAMILTON: Your Honor, I am going to have to object to that line of testimony and that line of questioning because that portion which was ceded by the Indians at one time was returned.

[76] MR. THOMAS: But it is still identified as a ceded portion.

THE WITNESS: It is, sir.

MR. HAMILTON: And does not constitute a ceded portion any longer.

THE COURT: Blue Bull is not within the ceded portion?

THE WITNESS: No, it is within the diminished portion.

MR. THOMAS: And I think it would be helpful.

THE COURT: He can go ahead and draw it. I doubt if it has anything to do with the case.

MR. THOMAS: I would suggest to the Court, it is the Government's view there is a sharp difference in jurisdiction between the diminished portion and the ceded portion.

Q. (By Mr. Thomas) In any event, just if you could just briefly show where the diminished portion runs and ceded portion runs.

A. I don't believe, Your Honor, that I could tell exactly, but I can do as well here—I think it covers what we are talking about. When the land was ceded to the United States, it followed the Big Wind River or the Wind River down as you get into this corner. I'm not sure exactly where. Generally on the area we are talking about it followed the Wind River which goes just at the edge of Riverton and then it follows here, so this was the [77] boundary of the diminished portion, and all we see on this map, other than that, I think we could say, if we weren't trying to be too technical, all of this other land north and east, west of the Big Wind River, and then this small portion in here that lays east of Riverton, south and east of the Popo Agie is the ceded portion of the Reservation.

MR. THOMAS: And I suppose we will be alluding to the treaties, Your Honor, that related to that, and how it was defined or at least call the Court's attention to them, but I thought it might be helpful to have that information. I think I have no other questions of Mr. Hobbs at this time.

MR. HAMILTON: I have a couple.

THE COURT: Go right ahead. We will finish him before noon.

MR. HAMILTON: Yes, sir. I have just two.

RECROSS-EXAMINATION

By MR. HAMILTON:

Q. Mr. Hobbs, the ceded portion you are talking about, you are talking about happened in 1905?

A. Yes, sir.

Q. And the Secretary of the Interior restored all remaining surplus lands which were previously ceded; isn't that correct?

A. That's correct.

Q. And therefore the Wind River Indian Reservation, with the exception of these lands which are shown as deeded, were all [78] within the Reservation at this time and has been since 1934, isn't that so?

A. When we use the term "within the exterior boundaries," that is what we are talking about.

Q. The whole thing?

A. That's right.

Q. There is no longer such a thing as ceded or diminished portion of that Reservation because it is all under the authority, whatever authority you have?

A. We have different laws.

Q. Of the Bureau of Indian Affairs?

A. It is, but there are different laws for leasing of oil and gas, different——

Q. All we are concerned about is——

A. No, but when you said "all alike," there may be others. I wanted to only stick to the others. There is different laws.

Q. But the ceded portion has been returned?

A. Yes, it has.

Q. O.K. So we are not concerned with a ceded portion any longer?

A. No, sir.

MR. HAMILTON: O.K. No further questions.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Court will stand in recess until 1:45.

[79] (WHEREUPON, trial proceedings recessed at 12:00 noon, and reconvened at 1:45 o'clock p.m., October 12, 1972.)

MR. THOMAS: May it please the Court: The United States would call at this time Mr. Miller.

(Witness sworn.)

JESSEE F. MILLER,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. THOMAS:

Q. As I have suggested to other witnesses, Mr. Miller, you may wish to speak a little more loudly than you usually do because it is necessary for all to be able to hear your testimony.

Would you state your full name for the record, please?

A. Jessee F. Miller.

Q. And where do you live, sir?

A. Arapahoe, Wyoming.

Q. Are you an Indian person, Mr. Miller?

A. Yes.

Q. And what Tribe, sir?

A. Arapahoe.

Q. Do you have any position on the Tribal Council, sir?

A. Yes. I'm the chairman of the Arapahoe Business Council.

[80] Q. In that capacity do you also serve as chairman of general meetings of the Tribe?

A. Sometimes.

Q. Yes, sir. What is your age, Mr. Miller?

A. 52.

Q. And how long have you lived on Wind River Indian Reservation?

A. My entire life.

Q. All your life. Could you tell the Court how close your home is to Fort Washakie?

A. About 30 miles.

Q. Do you have occasion to go to Fort Washakie?

A. Yes.

Q. And could you tell the Court about how often?

A. About twice a week.

Q. Are you familiar with the vicinity of Fort Washakie and the people who live there?

A. Yes.

Q. Do you have any knowledge as to whether that is or is not an Indian community there?

MR. HAMILTON: Objection. That calls for a conclusion on the part of the witness.

THE COURT: I will let him answer.

THE WITNESS: In my opinion, yes, I would say it is an Indian community.

[81] MR. THOMAS: I think I have no further questions of this witness, Your Honor.

CROSS-EXAMINATION

By MR. HAMILTON:

Q. You live about 30 miles east of Fort Washakie, don't you, Jessee?

A. Yes.

Q. You live in the surrounds of the Arapahoe post office?

A. I live about 4 miles from there north.

Q. I see. Well, does the Indian community, where does the Indian community at Fort Washakie stop?

A. I don't believe I could answer that.

Q. Where does it start?

A. I wouldn't know.

Q. So you don't know where the community starts or stops?

A. No. There is no boundary lines.

Q. All right. And there would be no way anyone could really tell where the community starts or stops?

A. No. Just judge by the people that live there, the majority, maybe.

Q. Do you know a man named Wilkinson who is a lawyer in Washington, D.C.?

A. Yes.

Q. He is the general counsel for Arapahoe Tribes, isn't he?

A. Yes.

[82] Q. Do you remember getting a letter from him on July 10, 1972—no—yes. I hand you what purports to be a letter written to you, Jessee, and it is a lousy copy, so you want to look at it pretty close, especially that portion I have underlined in red. Can you read it?

A. No, I can't read it.

THE COURT: Can you identify it? Then you read it for the record.

MR. THOMAS: Might I have a chance to examine it first?

THE COURT: I thought you had a copy. Let Mr. Thomas see it and maybe we can stipulate as to its admissibility even though it is not legible.

MR. HAMILTON: All right, Your Honor. It is a lousy copy.

MR. THOMAS: Your Honor, I would object to the information in this letter for two reasons. I think it is hearsay as far as this witness is concerned, and, furthermore, it would appear to state the conclusions of the writer as to the law applicable to a particular situation which I do not think is relevant or material in this case.

THE COURT: I will try not to be influenced by it. It may be received in evidence or you may read it in the record or that portion which is material.

MR. HAMILTON: Thank you, Your Honor. Would you [83] like to mark this?

(WHEREUPON, Defendants' Exhibit H was marked for identification by the reporter and received in evidence.)

MR. HAMILTON: The portion which is germane, so far as the defense is concerned, Your Honor, states in the second paragraph, "States normally do not exercise any jurisdiction within the exterior boundaries of an Indian Reservation without the express authority of Congress. States have jurisdiction over non-Indians within a Reservation and

where Congress has permitted land to enter fee status, the State has jurisdiction over the fee-land."

And this is from Glen A. Wilkinson who has, for a number of years, been general counsel to the Arapahoe Tribe in Washington, D.C.; is that correct?

THE WITNESS: Yes.

THE COURT: Wilkinson?

THE WITNESS: Yes, Wilkinson.

THE COURT: I think I knew that anyway, but for the records it is all right to introduce it.

MR. HAMILTON: Thank you. I have no other questions.

MR. THOMAS: I would like perhaps to have him available, Your Honor, until the end of the trial.

[84] THE COURT: Very well. You are excused, Mr. Miller.

(Witness excused.)

MR. THOMAS: And now the United States would call Mr. Harris.

(Witness sworn.)

ROBERT HARRIS, SR.,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. THOMAS:

Q. And as I have with other witnesses, Mr. Harris, I would like to suggest that perhaps you speak a bit more loudly than you usually do so all can hear your testimony.

I would like for you to state your name.

A. Robert Harris, Senior.

Q. Where do you live?

A. Sixteen miles north of Fort Washakie.

Q. Is that on the Wind River Indian Reservation?

A. Yes, sir.

Q. Are you an Indian person, Mr. Harris.

A. Yes, sir.

Q. And which Tribe?

A. Shoshoni.

Q. How old are you?

A. 59.

[85] Q. And how long have you lived on Wind River Indian Reservation?

A. All my life with the exception of four years.

Q. Where did you live those four years?

A. In school.

Q. Do you have any position or job with the Tribal Council, sir?

A. I'm chairman of the Shoshoni Business Council.

Q. And in that capacity do you also preside at general Tribal meetings?

A. Whenever elected I do.

Q. Is my understanding correct that at the general Tribal meetings they elect a chairman at each meeting; is that correct?

A. Yes, sir. At General Council meetings the chairman is elected from the body.

Q. I don't know whether the Court and counsel are familiar with this, but at the General Council meetings all adult enrolled members are entitled to participate; is that correct, sir?

A. Yes, sir.

Q. And the ordinance that is the subject matter of this lawsuit which, so I don't misspeak myself, Ordinance 26, No. 3081, was adopted at a General Council meeting of the Shoshoni Tribe; is that correct?

A. Yes, sir.

Q. And if my recollection does serve me, you were assigned [86] as chairman, you chaired that particular meeting?

A. Yes, sir. I was chairman during that General Council meeting.

Q. Mr. Harris, are you familiar with the Fort Washakie community and the surrounding area?

A. Yes, sir.

Q. How often do you have occasion to be there?

A. Oh, as high as three and four times a week.

Q. You know the people who live in that vicinity?

A. Yes, sir.

Q. Do you know, sir, whether it is an Indian community or not?

MR. HAMILTON: Again, I object, Your Honor, on the basis of asking for a conclusion on the part of the witness without proper foundation.

THE COURT: You may answer.

THE WITNESS: I would say, sir, it is Indian Country.

Q. (By Mr. Thomas) All right. I guess I would go back to my other question. I think you indicated you know whether it is an Indian community. What is your answer as to whether it is an Indian community or not?

MR. HAMILTON: Objection. It has been asked and answered.

THE COURT: He may answer again. Go ahead.

[87] THE WITNESS: I was merely confused as to whether you were talking about Indian Country——

Q. (By Mr. Thomas) "Indian Country" is a legal term.

A. I would say it is not a community in the sense of a white community or anything else. This is related as Indian Country, no boundaries.

Q. All right, sir. If my recollection serves me, you were present at the meetings of the council relating to the liquor license for The Blue Bull; is that correct?

A. Yes, sir.

Q. And is it correct that there were two meetings?

A. I chaired the meetings, both meetings.

Q. And would you tell the Court whether there were any reasons for denial of the license to The Blue Bull?

A. The reason——

MR. HAMILTON: I object. The record speaks for itself. It is a record in the Court. Is that the minutes?

MR. THOMAS: The minutes of a dialogue with them, Your Honor. Mr. Harris was present and chaired the meeting.

THE COURT: I will let him testify as to what happened. You can tell us what happened.

THE WITNESS: Well, a public hearing was held. There was—I don't recall the number of people that came to protest the issuance of the license. The one requesting the license was present and also attended those hearings with a [88] chance to state their views.

From the result of those protests issued at that meeting and because of protests other than those, the Business Council saw fit to deny the license.

MR. THOMAS: All right, sir.

THE COURT: Have you ever granted them a license before, Mr. Harris?

THE WITNESS: No, sir.

Q. (By Mr. Thomas) An application had been submitted to the Tribal Councils; is that correct?

A. Yes, sir. An application was submitted, I think, about a week prior to the hearing. I'm not sure about that.

Q. Now, there is one point which you may have information about and you may not, Mr. Harris. Ordinance No. 26 provides in Section 4f that in connection with the application there should be payment of a fee of not less than $300.00 nor more than $1,500.00 per annum. Are you familiar with that requirement?

A. Yes, sir.

Q. Do you know what fee was required in connection with the application for Blue Bull?

A. There was no fee mentioned because the license, if a license would have been granted, a fee would have been set. In this case the license wasn't granted. I don't recall any mention of any fee whatsoever.

Q. You don't know what the fee would have been for the [89] license to The Blue Bull?

A. No, sir, I don't.

Q. Is my understanding correct, Mr. Harris, that you have been involved for a number of years in the Tribal Council, the Business Council and so forth?

A. Yes, sir.

Q. And could you perhaps give the Court a concise statement of the matters that are the concern of your Tribal Council and your Business Council when you meet?

MR. HAMILTON: I object, Your Honor. It is incompetent, irrelevant and immaterial to the purposes of this hearing.

THE COURT: I doubt if it is material. How many attended this General Council meeting, Mr. Harris? Do you recall, approximately?

THE WITNESS: I think the attest there shows the number voting.

MR. THOMAS: The attestation does include that information, Your Honor. Since you ask the certification says that, "We hereby certify that on February 26, 1971, and February 13, 1971, the Shoshoni and Arapahoe Indian Tribes in

General Council duly called and assembled at Fort Washakie, Wyoming, and Arapahoe, Wyoming, attended by approximately 225 adult members of the Shoshoni Tribe and by approximately 300 adult members of the Arapahoe Tribe, constituting a representative [90] portion of the membership, adopted the foregoing resolution and Ordinance No. 26 by a vote of 144 for and 0 against (Shoshoni Tribal members) and a vote of 109 for and 0 against (Arapahoe Tribal members)."

That is what it says, Your Honor.

Q. (By Mr. Thomas) Well, Mr. Harris, let me ask you this: Is it part of the business of the council to manage the affairs of the Wind River Reservation for the Tribes?

A. Yes, sir.

Q. In connection with that, do you ever deal with business activities on the Wind River Indian Reservation?

A. All business transactions that involve the Tribe, we do.

Q. How about the private businesses of other persons?

A. No, sir.

Q. You do not concern yourself with those?

A. No.

Q. Are you familiar with the requirement for a trader's license?

A. Yes.

Q. Does the council have anything to do with trader's licenses?

A. No, sir. That is a regulation of the Secretary and enforced by the Secretary.

Q. And so the Tribes do not enter into that?

[91] A. No, sir.

MR. THOMAS: I believe I have no further questions of Mr. Harris.

THE COURT: You have been on the council a long time, I believe, have you not, Mr. Harris?

THE WITNESS: Yes.

MR. HAMILTON: Could I have a moment, Your Honor?

THE COURT: Yes.

Do you ever concern yourself as a member of the Tribal Council with businesses located on fee-land, privately owned land?

THE WITNESS: No, sir. Most of those operate their own

businesses. The Business Council is charged to confine themselves to Tribal business and not individual business.

THE COURT: That is the way I understood it.

CROSS-EXAMINATION

By MR. HAMILTON:

Q. Mr. Harris, I heard some testimony from the superintendent to the effect that there are about 4,500 Shoshoni—enrolled Shoshoni and Arapahoe enrolled Indians in the confines of Exhibit G which is the big map there; is that right, or is that close.

A. Yes, that is approximately.

Q. O.K. Now, since you've been on the council for the Shoshoni for so long, can you tell me how many other people live [92] there?

A. Other than enrolled members of the Tribe?

Q. Yes.

A. I don't know. I don't believe I could. I could probably make a pretty wild guess, but I wouldn't have any way of knowing.

Q. A lot more than 4,500?

A. On the Reservation?

Q. Yes.

A. I doubt that.

Q. You don't think there are more than—you don't think there are more non-Indians in that area then there are Indians?

A. No, sir, I do not.

Q. Well, actually the city of Riverton is in that area?

A. The city of Riverton is on a ceded portion of the Reservation.

Q. But it is on this map, isn't it?

A. Yes, sir.

Q. And that map is the exterior boundaries of the Reservation?

A. Yes, sir.

Q. And just because someone has gone out and counted Indian families doesn't mean that all of the members of that family are enrolled Indians, does it, Mr. Harris?

A. I can only assume they might be.

[93] Q. Might or might not be, isn't that so?

A. That's right.

Q. And if they are not enrolled Indians, then they are

non-Indians so far as the Tribal jurisdiction is concerned; isn't that correct?

A. Tribal jurisdiction, yes.

Q. Now, why is it, Mr. Harris, that when you have a general meeting—let me ask you this, first: How many enrolled Shoshonis are there?

A. Approximately 2,100.

Q. How many enrolled Arapahoes are there?

A. I don't know.

Q. O.K.

A. I'm not an Arapahoe.

Q. I know you are not. Do you know about, approximate?

A. Approximately 2,800.

Q. Now, back to my former question. Out of 2,100 Arapahoes and Shoshonis, there were only 225 adult members at this meeting according to the certification on this ordinance?

A. Yes, sir.

Q. Which is ten percent?

A. Yes, sir.

Q. And out of 2,800 Arapahoes, according to this certification, there were 300; is that correct?

A. That is what the assertion says.

[94] Q. And out of that, out of the 225 Shoshonis, only 144 voted for your Ordinance No. 26?

A. Yes, sir.

Q. And only 109 of the Arapahoes out of 300?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Which, if my addition serves me right, is less than fifty percent of those who were there voted for it; is that correct?

A. I can only say what the attest there shows.

Q. O.K. The certification says 525 total and only 253 of them voted for this ordinance; right?

A. Yes.

Q. O.K. How many businesses operate within a five miles area of the Government compound at Fort Washakie? Do you know?

A. I'd say in the neighborhood of five. I'm not too sure.

Q. How many of those are operated by enrolled Indians?

A. Two of them, I think.

Q. Two. Are there other businesses located on the Reservation outside of that five mile radius?

A. Yes.

Q. And are most of them almost without exception operated by non-Indians?

[95] A. Not entirely.

Q. Well, how about a figure of ninety percent? Are ninety percent of them operated by non-Indians?

A. No, sir, I wouldn't say that.

Q. What percentage would you say?

A. I would say there is about a fifty percent.

Q. Where are those businesses located?

A. At the Ethete center.

Q. Where is the Ethete center?

A. At Ethete.

Q. That would be here?

A. Yes, sir.

Q. And how far away is that from Fort Washakie?

A. I think it is approximately six miles. I'm not too sure.

Q. And that is an Indian community or are you sure of that?

A. No, sir, I'm not sure of that.

Q. O.K. And the Tribe really has no jurisdiction over non-Indians?

A. No, sir.

MR. HAMILTON: No further questions.

REDIRECT EXAMINATION

By MR. THOMAS:

Q. Mr. Harris, Mr. Hamilton examined you about numbers and so forth. Was the number that is shown on the certification [96] enough to adopt that ordinance for the Tribe?

A. Yes, sir. That is a representative number.

Q. And how is the representative number defined?

A. There is no constitution in the by-laws of either one of these Tribes, so a duly called meeting, actually there would be no restraint if there was only ten people if they go ahead and decided to do it. This doesn't operate this way because there wouldn't be much sense. It could be overturned the next time. So they more or less assume what is a representative number.

Q. And proceed to adopt legislation in that fashion?

A. Yes, sir.

Q. Is it correct that the General Council is a legislative body?

A. Yes, sir, in a sense they are.

Q. And this would be in your instance a legislative body of the Shoshoni Tribe?

A. Yes.

Q. You say there is no constitution or by-laws, however.

A. No, sir.

Q. So the authority to legislate is derived in what fashion, Mr. Harris?

A. It is arrived through the General Council with a mandated instruction to the Business Council.

Q. Yes. But I'm speaking of the authority of the General [97] Council to legislate.

A. They are the people. They are the Tribe.

Q. And this is what their authority is?

A. Yes.

Q. Now, Mr. Hamilton asked you about the town of Riverton and so forth and you told him that it was on the map but it was on the ceded portion; is that correct, sir?

A. Yes, sir.

Q. And you seem to be making a distinction between the ceded portion and some other unit. Could you tell the Court what that was, sir?

A. I make that distinction because of the late decision of the Supreme Court of the State of Wyoming.

Q. Is that the Moss case that you have in mind?

A. Yes, sir.

Q. And so you recognize a ceded portion. What else do you recognize on the Reservation, sir?

A. There is the reclamation area of the Reservation.

Q. Is that a part of the ceded portion?

A. Yes, sir. That is on the north side of the Wind River.

Q. What do you call the area south of the Wind River?

A. The diminished portion of the Reservation.

Q. And I believe you said that you live sixty miles north. Do you live on the diminished portion?

A. No, sir. I live on the ceded portion.

[98] Mr. Thomas: You live on the ceded portion. I believe I have no further questions.

The Court: You are excused, Mr. Harris.

MR. HAMILTON: I wonder if I can ask him a couple questions.

THE COURT: You may if they are material.

RECROSS-EXAMINATION

By MR. HAMILTON:

Q. Mr. Thomas went through what you call the diminished and ceded portions——

THE COURT: Are we dealing here with deeded and fee-lands, not diminished or ceded land? I do not know why we are bringing this up. I'm going to decide this on the question of fee-land.

MR. THOMAS: May I make a comment? Since you raised the question, Your Honor, the position of the Government very simply is that the case law does recognize a distinction between what would be the ceded portion and diminished portion, and upon that distinction depends on the status of the fee and Indian owned lands.

THE COURT: The question is of fee-land here.

MR. THOMAS: Well, what the Government will be arguing here, if an area is identified as Indian Country, then even the fee-land in that area is part of the Indian Country, even though title may have passed out of an Indian person.

[99] THE COURT: Very well.

Q. (By Mr. Hamilton) Mr. Harris——

THE COURT: I will take judicial notice of the fact all this country here is Indian Country and is so defined and has been for the last hundred years.

MR. HAMILTON: At least since Judge Pickett, Your Honor, handed down the Hildebrand decision.

THE COURT: Yes.

Q. (By Mr. Hamilton) Mr. Harris, are you familiar with all of these plain white tracts in through here which constitute about fifty percent of this whole area, indicating the land around Fort Washakie on east to Riverton?

A. Am I familiar with each individual tract?

Q. Are you familiar with generally what the white designation is in here?

A. I don't know what the white designation is. I can't see the legend.

Q. Well, the legend says, "trust, individually owned Indian allotment or tract."

A. Oh, yes.

Q. And isn't it true, Mr. Harris, that these lands will, in the course of time, under normal circumstances, be fee-patented lands?

A. No, sir, not under normal circumstances.

Q. Sir?

[100] A. No, sir. I do not agree with that. Not under normal circumstances.

Q. What will they do?

A. It would have to be under Acts of Congress or such things to force patent fees upon the people.

Q. Well, the patent that was issued in this case was issued in 1954?

A. Yes, sir.

Q. And it was from originally what was trust, individually owned Indian allotment or a tract?

A. Yes, sir.

Q. And most of the patents which have been issued in that area have been under that particular Act of Congress, have they not?

A. Yes, sir.

Q. And are you aware, sir, of the fact that that Act of Congress states that when those lands are so patented they come under the civil and criminal jurisdiction of the State or territory?

A. Yes, sir, I'm aware of that.

Q. And therefore I suppose that is accountable for your testimony that the Tribes have no jurisdiction over such lands?

A. That's correct.

MR. HAMILTON: No further questions.

THE COURT: You are excused, Mr. Harris.

[101] (Witness excused.)

MR. THOMAS: And the Government at this time would call Mr. Keep, Your Honor.

Your Honor, I might just briefly preface Mr. Keep's testimony by calling the Court's attention to paragraph five of the stipulation which was designed to capsulize his testimony about the purchase of the Coors beer. In the process of exchanging a stipulation, a phrase was added at the end, "and would further testify that on April 3, 1972, he advised

Margaret J. Mazurie that if she did not apply for a Tribal liquor license, she would be subjected to a felony charge."

I entered into the stipulation, but Mr. Keep then explained to me he was not sure that was a completely fair statement of what occurred, and I thought that it was perhaps best to give him a chance to explain that particular portion of the stipulation.

THE COURT: Very well.

(Witness sworn.)

ARCHIE L. KEEP,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. THOMAS:

Q. And I would just ask you to tell the Court what happened as you recall it, Mr. Keep.

[102] A. I believe there was a telephone conversation with Mrs. Mazurie. I could have stated to her it was a felony charge, but I know better for the fact is the first time it is a misdeamor [sic]. The second time is a felony. Like I say, there is a possibility that I did say this to her.

Q. You would agree that you did discuss the fact there would be a criminal violation?

A. Yes.

Q. If there was no application for license?

A. I can't remember whether I phoned her or she phoned me, one of the two, and there was a conversation as to the procedures to go through to obtain a Tribal liquor license, and this is the consequences.

Q. All right, sir. Now, just to complete the record, would you state your full name?

A. My name is Archie L. Keep.

Q. And where do you live?

A. Fort Washakie, Wyoming.

Q. Is that on the Wind River Indian Reservation?

A. Yes, sir.

Q. And are you employed?

A. Yes, sir. I'm employed by the Bureau of Indian Affairs as a supervisor criminal investigator.

Q. And how long have you been so employed at Wind River?

A. It will be three years this coming February—June, I'm [103] sorry.

Q. Three years in June of '73?

A. Yes.

Q. So something more than two years as of this time?

A. Yes, sir.

MR. THOMAS: I believe I have no further questions of Mr. Keep, Your Honor.

THE COURT: You made the purchase to be used as evidence in the case?

THE WITNESS: Yes, sir.

THE COURT: They knew who you were when you purchased?

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

By MR. HAMILTON:

Q. You are employed by the Bureau of Indian Affairs?

A. Yes, I am.

Q. And you thereby get your authority through the United States Government?

A. Correct.

Q. And the United States Government does not assert any authority over non-Indians on deeded land within the exterior boundaries of the Reservation, does it?

A. No, sir.

MR. HAMILTON: No further questions.

[104] THE COURT: You are excused, Mr. Keep.

(Witness excused.)

MR. THOMAS: Your Honor, I believe there have been marked and received in evidence as of this time Government's Exhibits, all Roman numerals, I, II, III, IV, V, VI, VII and VIII. In the event I have inadvertently overlooked offering any of those, I would reoffer them.

THE COURT: If any have been overlooked, they may be received in evidence.

MR. THOMAS: And the Government would rest at this time.

THE COURT: Government rests.

MR. HAMILTON: Your Honor, I wonder if we could have

a few minutes recess so we can discuss what we are going to do.

THE COURT: Very well. Court will stand in recess a few minutes.

(WHEREUPON, trial proceedings recessed at 2:30 o'clock p.m., and reconvened at 2:45 o'clock p.m., October 12, 1972.)

MR. HAMILTON: Your Honor, at this time I would like to move the Court for an order dismissing this action or a finding of not guilty for the failure of the prosecution to find a violation of Title 18, United States Code, Section 1154 [105] beyond a reasonable doubt. The statute reads under the definition——

THE COURT: I have read it twice.

MR. HAMILTON: All right. It is our contention that the United States has failed to prove beyond a reasonable doubt any violation of this ordinance because they have failed to prove beyond a doubt that my clients are operating in an Indian community.

Now, the original patent from which my clients got their title, Your Honor, says that the United States of America grants this to these people to have and to hold, together with all rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever.

There is no restrictions, no reservations of any sort.

Now, Article 21, Section 26——

THE COURT: What I am going to do, I am going to take this under advisement and tell you people what to do. I will treat your motion as a motion for judgment of acquittal and let you put on your evidence. Then I will instruct the lawyers as to what I want.

MR. HAMILTON: All right, sir. I'll wait then and put this on you a little later.

THE COURT: Then you won't have to do it twice.

MR. HAMILTON: All right.

I would like to call as the first witness Martin Mazurie.

[106] (Witness sworn.)

MARTIN DEWALT MAZURIE,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. HAMILTON:

Q. Will you please state your name?
A. Martin Dewalt Mazurie.
Q. Where do you live, Mr. Mazurie?
A. I live 580 Fremont Street, Lander, Wyoming.
Q. Does your wife own The Blue Bull, Inc.?
A. Yes, she does, sir.
Q. And where is this? Is this a retail liquor outlet?
A. Yes, it is.
Q. How long has that business been a retail liquor outlet?
A. Since 1954.
Q. And how long have you owned it?
A. I've owned it for three years, three and a half.
Q. And what is the state of title to that land?
A. It is deeded land.
Q. It is not—are there any restrictions or anything else in the deed?
A. No, there is not.
Q. Is your State liquor license current?
A. Yes, sir.
[107] Q. And when does it expire next?
A. April 3, 1973.
Q. And has there ever been a protest rendered by the Tribe against the issuance of your liquor license?
A. No, sir.
Q. Are your situated on what kind of a road?
A. I'm situated on a County road.
Q. And it is a paved road?
A. Yes, sir.
Q. How far away from the Government compound is your place of business?
A. Approximately three quarters of a mile.
Q. How much money do you have invested in that property, sir?
A. Approximately $65,000.00.
Q. And how long has it been since you have been able to earn any money from that?
A. Since April 3, 1972.
Q. Have you had any of your goods confiscated?

A. Yes, sir.
Q. And when was that?
A. Let's see. I can't remember the exact date. I'd have to look it up.
Q. And what did that confiscation entail?
A. I was gone at the time. My wife was tending bar there
[108] and Mr. Keep and Mr.——

MR. THOMAS: Did I understand you weren't present at that time?
THE WITNESS: Yes.
THE COURT: Your wife is here?
THE WITNESS: Yes. I came in right at the middle of it.
MR. THOMAS: I see. O.K.

Q. (By Mr. Hamilton) O.K.
A. Mr. Keep and Mr. King and Mr. Caturia was sent by the superintendent, by the superintendent of the agency, Clyde Hobbs, and came into the bar without a warrant to confiscate the liquor and the spirits and walked into the bar and just took over the establishment and had a Government vehicle there and loaded out the entire stock that was left.
Q. Did they have—you said they had no warrant?
A. They had no warrant for confiscation.
Q. Did they have a Court order of any sort?
A. No, sir.
Q. Did they show you any documents of any kind?
A. Mr. Keep had a Federal book, and when I got there why I read it. He showed it to me.

MR. HAMILTON: No further questions.

CROSS EXAMINATION

By MR. THOMAS:

[109] Q. I believe you said that your wife owns The Blue Bull, Inc.; is that right?
A. Yes, sir.
Q. When you say that, you mean she owns the stock?
A. Yes, sir. She is the president of the corporation.
Q. Do you own any stock?
A. No, sir.
Q. Why don't you own any stock, Mr. Mazurie?

A. Because I was the city councilman for the city of Lander and under the Wyoming State law it says that a councilman cannot own a liquor license.

Q. And so you didn't even own stock in the corporation which had the license?

A. No, sir.

Q. And when you say you've owned it since about 1968 this really would refer to your wife; is that right?

A. No, sir. Yes, sir. Yes, sir. That's right.

Q. Now, I say about 1968. You said about three and a half years. I was doing some figuring. Is '68 about right?

A. Yes, it is.

Q. Did you buy it about the time of the liquor license expiration?

A. We brought it out of an estate, and it was a transfer by the County Commissions and then renewed into my wife's name.

Q. I guess what I was getting at, does your wife's [110] ownership date from about the April 3rd date?

A. Yes, sir.

Q. You say this is deeded land and my understanding is The Blue Bull owns that land; is that right, sir?

A. Yes, sir.

Q. Do you recall what the license fee is for the State license?

A. Yes. We pay $500.00 a year, sir.

Q. And did you pay that $500.00 in April of this year?

A. Yes, sir.

Q. Now, it is correct that an application was submitted to the Tribes for a Tribal liquor license?

A. That's correct, sir.

Q. I believe your wife signed that. Were you familiar with the fact that it was being submitted?

A. Yes, sir.

MR. HAMILTON: I object, Your Honor. This is outside the scope of direct examination.

THE COURT: Overruled.

Q. (By Mr. Thomas) And did you attend at any meeting of the Business Council in connection with that application?

A. Yes, sir.

Q. Do you remember how many people—well, let me say this: Did you attend more than one meeting?

A. Yes, sir.

[111] Q. You attended two?

A. Yes, sir.

Q. Do you know how many people were at the first meeting?

A. Well, there was just the Joint Business Councils of the Arapahoe Tribe and Shoshoni Tribe.

Q. Would it be correct at that meeting what was discussed was the process for submitting an application?

A. Well, what was discussed at that meeting was that we were trying to find out what kind of application we were to fill out and what the price of the license was going to be.

Q. Did anyone tell you a price of the license?

A. No, sir, and they also didn't have an application.

Q. Then you attended at a second meeting?

A. Yes, sir.

Q. Did you have an attorney at the second meeting?

A. Yes, sir.

Q. And who was that, sir?

A. Mr. Boyer.

Q. And do you know how many people were at that meeting?

A. I couldn't tell you.

Q. And at that meeting is it correct that what was discussed was whether the license should be granted or not?

A. Well, it was a hearing.

Q. I see. On that question?

A. Right.

[112] Q. O.K. And there were several people who did make protests; is that correct, sir?

A. Yes, sir.

Mr. Hamilton: I'm going to object. This is incompetent, irrelevant and immaterial and outside the scope of direct examination.

The Court: We do not restrict in the Federal Courts to the direct examination. As long as it is material I let it in. I will see what they have to say.

The Witness: I'll answer that. There were protests but had nothing to do with our license.

Q. (By Mr. Thomas) What was the protest?

A. The protest, one of them was against my attorney for sending a bill to her for when he defended one of her——

THE COURT: One for what?

THE WITNESS: One of the protests was against my attorney for sending a bill to her for getting her son out of trouble down in Denver and one of the other protests was a person that protested that their house got burned down and said somebody come from that bar and burned down the house, and they had no evidence whatsoever that somebody came from the bar and burned the house down.

Q. (By Mr. Thomas) Were there any other things that you recall being mentioned at that time?

A. Well, it was just a normal hearing. Somebody said [113] they didn't want to see this license issued.

Q. Is it correct that you did work at The Blue Bull from time to time?

A. Yes, sir.

Q. Did you work there regularly or just on occasion?

A. I worked there regularly, sir.

Q. Every night or did you take a night off or how did it work?

A. Oh, I was there, you know how business goes, you work twelve hours a day or something like that.

Q. Could you give the Court any idea as to who your customers were at The Blue Bull, by and large?

A. Well, I just couldn't say who they were. People came from Riverton and people came from Lander, Crowheart, Ethete, Dubois, I mean from that area there.

Q. It drew from the surrounding area?

A. It drew from a radius of approximately over fifty miles.

Q. Did you ever have any instances where you had any disturbances on the premises?

A. Yes, sir.

Q. Did you call for any help from authorities?

A. Yes, sir.

Q. Do you remember who you called?

A. Well, if it was a non-Indian I called the Sheriff's [114] department. If it was an Indian I called the Tribal

police, and that is an understanding between the Sheriff's department and the Fort Washakie police department.

Q. And how did you make the determination between the Indian and non-Indian person?

A. How did I make the determination?

Q. Yes.

A. Because I knew them.

Q. So you know whether it was an Indian or non-Indian causing the trouble?

A. Yes, sir.

Q. But you did ask for assistance from the Tribe?

A. Yes, and the reason I asked for assistance was because the Tribal police department has the understanding they take care of their own and the Sheriff's department takes care of all the rest.

Q. Did you ever have occasion to testify in Tribal Court with respect to any matter at The Blue Bull?

A. Yes, sir.

Q. This was the Tribal Court at Wind River, Fort Washakie?

A. Yes, sir.

Q. Have you ever had any burglaries at The Blue Bull Bar?

A. Oh, let's see. I think the first year we were in operation, why, we had a couple break ins [sic], yes. We are kind of out there by ourselves, you know.

[115] Q. Do you know who conducted investigations of those?

A. Well, it was Indians involved and the Reservation police—well, it wasn't the Reservation police. It was Mr. Keep, special investigator for the B.I.A.

Q. Do you know Mr. Leo Ford?

A. Yes, I do.

Q. Has he, to your knowledge, ever investigated any events at The Blue Bull Bar?

MR. HAMILTON: I am going to have to object again as being incompetent, irrelevant and immaterial.

THE COURT: I think we are getting a little off the Reservation in this case.

MR. THOMAS: I'm trying to tie my questions to The Blue Bull Bar.

Q. (By Mr. Thomas) Do you know whether Mr. Ford has ever investigated any instance?

A. I have got a short memory. I can't remember right off-hand. It has got me on the spot.

Q. Now, going back to the application, an application was made, and I believe you said you were at a hearing where the application was denied?

A. Yes, sir.

Q. Is it correct that you then did close The Blue Bull for a period of time?

A. Well, we closed The Blue Bull for a period of time [116] because on a telephone conversation Mr. Keep made the accusation if we opened up he would charge my wife with a felony.

Q. How long did you keep it closed?

A. Oh, I would say three weeks, I think. Approximately three weeks.

Q. And then you reopened?

A. Yes, sir.

Q. How long did you stay open?

A. Until they confiscated my liquor.

Q. Was there a period of time after you reopened where you closed?

A. Yes, sir.

Q. How long a period of time was that, sir?

MR. HAMILTON: Again, Your Honor, I will object as being incompetent—I think it is incompetent, irrelevant and immaterial. I don't think it has anything to do with the case.

THE COURT: Sustained.

MR. THOMAS: Well, I might submit in the way of an offer of proof, Your Honor, that it might be material in the context of the recognition by the people who were operating the business that they did comply at one point, and this perhaps would, as I say, be material on the question whether they were recognizing the authority of the Tribe.

THE COURT: His testimony said when he was [117] threatened with being charged with a felony they closed down for a while.

MR. THOMAS: Then they reopened, and I believe he said

they closed down after that. I was trying to establish how long.

THE WITNESS: We were just in the process of getting legal service. That is the reason.

MR. THOMAS: I see.

Q. (By Mr. Thomas). And I believe you said that when you arrived Mr. Keep and Mr. King were there?

A. Mr. King and Mr. Caturia.

Q. Mr. King arrived after you did?

A. No. They were all there.

Q. All three of them?

A. Yes, sir.

Q. Were there any other officers there at that time?

A. No, sir.

Q. Did they furnish you with a list of the things that they took?

A. No, they didn't to me.

Q. Did they furnish your wife with one?

A. Yes, sir.

Q. And that was the alcoholic beverages; is that right?

A. Yes, sir.

MR. THOMAS: I think I have no further questions, [118] Your Honor.

MR. HURSH: Your Honor, may I inquire of this witness? Counsel has no objection.

MR. HAMILTON: I have no objection.

THE COURT: Let's see. They are separate defendants?

MR. HURSH: Yes, Your Honor.

THE COURT: Very well.

CROSS-EXAMINATION

By MR. HURSH:

Q. Mr. Mazurie, I would like to ask whether or not on date in question Bonnie Velasquez was an employee of The Blue Bull Bar when the sale was made?

A. No, sir.

Q. She was not?

A. No, sir.

Q. Would you explain to the Court how she got involved in that sale?

A. Well, she used to work for us and she dropped by one day. Well, I had to go to Riverton and I asked her if she would stand-in for me and she said she would.

Q. Was she paid anything for this?

A. No, sir.

Q. In other words, she was just doing you a favor when this happened?

[119] A. Yes, sir.

Q. Would there have been an incident or conversation you had with Bonnie to indicate that she might have known or had reason to know that your license was having difficulties?

A. Well, no. We have never talked it over with her. Just that, you know, well, comments and things like that.

Q. She was an employee of yours when the bar was running with no difficulties as far as licensing was concerned?

A. Yes, sir.

Q. And you asked her to stand-in and do you a favor and that was on the 13th day of June, 1972?

A. Yes, sir.

MR. HURSH: I have no further question, Your Honor.

MR. HAMILTON: I have just a couple, Your Honor.

REDIRECT EXAMINATION

By MR. HAMILTON:

Q. Mr. Mazurie, you stated that you were outside of the Fort Washakie area. Let me ask you this: Do you pay taxes?

A. Yes, I do.

Q. To the State of Wyoming?

A. Yes, sir.

Q. Do you get any—are you an enrolled member of any of the Indian Tribes?

A. No, sir.

[120] Q. Do you have any Indian blood?

A. No, sir.

Q. Does the Indian department, either the Bureau of Indian Affairs or the Tribes, do they perform any Governmental functions either for you or for your land?

A. No, sir.

Q. Or to your land?

A. Just except for water.

Q. Water?

A. Right.

Q. When you call the Indian police that is because there is an Indian involved?

A. Yes, sir.

Q. And because that is what you have been told——

A. Yes, sir.

Q. ——to do?

A. Yes, sir.

Q. And that is about the only contact you have with the Indians?

A. Yes, sir.

MR. HAMILTON: No further questions.

THE COURT: Are you still a member of the city council?

THE WITNESS: No, sir, I'm not.

THE COURT: What is your business? No one asked [121] you.

THE WITNESS: I'm another bar owner, sir. I own another bar.

MR. THOMAS: I thought I might examine about Mr. Hursh's question, and also about the water.

RECROSS-EXAMINATION

By MR. THOMAS:

Q. You say that you obtain water through the Tribe or through the agency or how, Mr. Mazurie?

A. Well, it was underneath—I don't know what ditch I'm under out there. I think it is the Ray ditch, the same as when I owned the ranch out there. You have to pay charges on the land to receive the water.

Q. Is this irrigation water or drinking?

A. Yes, sir, I irrigate approximately three acres of the ten acres.

Q. I see. Now, you said that Bonnie Velasquez had been employed by The Blue Bull?

A. Yes, sir.

Q. Do you recall when her employment terminated?

MR. HAMILTON: Your Honor, that is incompetent, irrelevant and immaterial because she is charged with violating the law on one day in question.

THE COURT: What was the question again?

MR. THOMAS: I asked when her employment [122] terminated. I think it would be pertinent on the question of her knowledge.

THE COURT: You may answer if you know.

THE WITNESS: Well, Your Honor, I'm not the bookkeeper

of the business and without looking back on the records I couldn't answer that.

THE COURT: Your wife probably could answer that if she is here?

THE WITNESS: Yes, sir.

Q. (By Mr. Thomas) Was it prior to the time of the April renewal of the license and application?

A. Yes. Yes, it was.

Q. And would your testimony be then that the only time she worked—and I use that advisedly—the only time she performed services in the bar was on this day?

A. Just filling in for me as a favor.

Q. And that is the only time she did it after her employment terminated?

A. Yes, sir, as far as I can recall.

THE COURT: When was her employment terminated, approximately? Do you know?

THE WITNESS: No, sir. I couldn't answer that without looking back on the records.

MR. THOMAS: I believe he did say sometime prior to the application for the Tribal license, Your Honor.

[123] THE COURT: You are excused.

(Witness excused.)

MR. HAMILTON: I would like to call Mr. Jim Farthing.

(Witness sworn.)

JAMES A. FARTHING,

called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. HAMILTON:

Q. Would you please state your name, sir?
A. James A. Farthing.
Q. Where do you live, Mr. Farthing?
A. Lander, Wyoming.
Q. And what is your occupation?
A. Fremont County Clerk.
Q. Are you the duly elected County Clerk?
A. Yes.

Q. How long have you held that office, sir?

A. Since 1958.

Q. Are you familiar with the area known as—shown on the map as Exhibit G, Defendants' Exhibit G?

A. Yes.

Q. Are you familiar with the area between the southern end of the map and the Wind River?

A. Yes.

[124] Q. In that area does Fremont County acting either by itself or as an arm of the State of Wyoming perform any functions in the Fort Washakie area?

A. Yes.

Q. What functions do you perform, sir? What functions does the State perform?

A. Oh, schools are administered by the State and the County. The County maintains roads.

Q. Do you maintain the road that leads from the highway past The Blue Bull?

A. Yes.

Q. Do you maintain all of the oiled roads on the Reservation?

A. Not quite all, but almost all except for the State highways.

Q. Except for the State highways?

A. Yes, sir.

Q. These are designated as County roads?

A. Most of them are, yes.

Q. And those are designated as County roads?

A. By agreement between the County Commissioners and the Indian department of Wind River agency.

Q. Yes. How about the County Sheriff's office? Do they assert jurisdiction over non-Indians in that area?

A. As far as I know they do, yes.

[125] Q. What about public health and public welfare?

A. There is some jurisdiction there by the County and the State. I'm not real familiar with that part of it.

Q. Your office issues the liquor licenses out there, sir?

A. Yes.

Q. And has there been a liquor license at The Blue Bull, Inc., location for a number of years?

A. Yes.

Q. Starting when?
A. 1954, I believe.
Q. And continuous since that time?
A. Yes.
Q. Is that license in effect at this time and current?
A. Yes.
Q. The fees have been paid?
A. Yes.
Q. What about the voting out there? Is that run by your office?
A. Yes.
Q. For all State, County, National elections?
A. Yes.
Q. Local elections?
A. Not the Tribal elections, but the local County elections, yes.
Q. Yes.
[126] A. And I do have something to do with the school elections.
Q. With the school elections?
A. I furnish voting machines for them or the County does.
Q. All right. Have you had an opportunity to check into the tax records in regards to that area?
A. I have.
Q. Are taxes paid to the State of Wyoming by all of the deeded landholders in that area?
A. I couldn't say by all. I presume they are, yes.
Q. Have you checked into The Blue Bull, Inc., specifically, sir?
A. Yes.
Q. And do they pay taxes to the State?
A. Taxes have been paid on that ten acres since 1955.
Q. That was when the patent was issued or the year after?
A. The year after the patent was issued.
Q. Is that the normal procedure when a patent is issued?
A. If it is issued and recorded after the 1st of February it doesn't become taxable until the next year.
Q. One more question. Do you know of any Governmental functions either performed by the Tribes or the Bureau of Indian Affairs?
A. I'm not familiar with them.

MR. HAMILTON: No further questions.

CROSS-EXAMINATION

[127] By MR. THOMAS:

Q. With respect to your last answer, are you saying there are none or none that you have an indication to be concerned?

A. I wouldn't want to say there aren't any, but I'm not familiar with them.

Q. All right. Now, you said that roads are maintained by the County on the Reservation, and this is by agreement, you said, between the County, and I think you said, the agency?

A. Yes.

Q. Are the Tribes party to that agreement? Do you know?

A. I'd have to look at the agreement. The agreements are signed by the superintendent and the County Commissioners. I don't really believe the Tribes are. I'm not real sure, though. I'd have to look them up.

Q. I believe you did characterize them as County roads?

A. Yes.

Q. Do you know if the County gets a fee-title to County roads?

A. Not always.

Q. Are there occasions when it does?

A. There are occasions when it buys the right-of-way and gets a title to it.

Q. Did it buy right-of-way out on the Reservation?

A. As I recall they applied for the right-of-way through the agency through a map, and I don't believe they acquired title [128] to it. I think it is more of an easement.

Q. Easement rather than ownership?

A. Yes.

Q. Would that be true of all of the roads you were talking about?

A. It wouldn't be true of all of them. I think it is true of all the paved roads.

Q. I see. What would be the situation with respect to the other roads?

A. Some of those are—have both right-of-ways on some

of them on the Reservation. I can't specify which ones, because I can't tell. But I know some of them are.

Q. You don't know whether the right-of-way was purchased or not adjacent to The Blue Bull?

A. I wouldn't say for sure.

MR. THOMAS: I think I have no further question, Your Honor.

THE COURT: You arranged for the voting precincts and provide the ballots, do you not, to the Indian Reservation?

THE WITNESS: Yes.

THE COURT: The lawyer overlooked that. I was familiar with that aspect. I just wanted to make sure they had not changed it.

THE WITNESS: It is still in effect.

THE COURT: You are excused.

SUPREME COURT OF THE UNITED STATES

No. 73-1018

UNITED STATES, PETITIONER,

v.

MARTIN DEWALT MAZURIE, ET AL.

ORDER ALLOWING CERTIORARI. Filed February 25, 1974.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.

☆ U.S. Government Printing Office: 1974—535-276/208

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In the Supreme Court of the United States

OCTOBER TERM, 1973

No.

UNITED STATES OF AMERICA

v.

MARTIN DEWALT MAZURIE, ET AL.

MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF CERTIORARI OUT OF TIME UNDER RULE 22(2) OF THE RULES OF THIS COURT

The Solicitor General, on behalf of the United States, moves for leave to file a petition for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit out of time, under Rule 22(2) of the Rules of this Court.

1. Through an error of the Land and Natural Resources Division of the Department of Justice (the Division which has responsibility for this case but which normally handles civil cases in which there is a 90-day period after judgment within which to petition for a writ of certiorari), this decision, declaring portions of two federal statutes unconstitutional, was not brought to the attention of the Office of the Solicitor General until December 12, 1973, 35 days